University of Alberta

Minority Religious Education Rights in Alberta: A Study of the Governance and Financial Issues in the Provision of Separate Schooling within the Public System

by

Stephen Louis Bemount

A Thesis
Submitted to the Faculty of Graduate Studies and Research
in partial fulfillment of the requirements for the
degree of Doctor of Philosophy

in

Educational Administration and Leadership

Department of Educational Policy Studies

Edmonton, Alberta

Fall 2007

Library and
Archives Canada

Published Heritage
Branch

395 Wellington Street
Ottawa ON K1A 0N4
Canada

Bibliothèque et
Archives Canada

Direction du
Patrimoine de l'édition

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file Votre référence
ISBN: 978-0-494-32917-7
Our file Notre référence
ISBN: 978-0-494-32917-7

NOTICE:
The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

AVIS:
L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protège cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.

Canada

So long as we respect in Canada the rights of minorities,
told either by tongue or creed, we are safe.
For so long it will be possible for us to be united.
But when we cease to respect these rights,
we will be in the full tide towards that madness
which the ancients considered the gods sent
to those whom they wished to destroy. *

Thomas D'Arcy McGee (1825-1868)

---

* Gillmore & Turgeon, 2001: p. 278

Abstract

This research arises out of a respect for and belief in Canada's formula for nationhood based on two founding cultures, which resulted in the public education system in some provinces, including Alberta, having two components, public schools and separate schools. Summarized is the statutory precedence that has given constitutional protection to minority religious education rights in Alberta. I review the judicial court decisions from across Canada over Alberta's first century that define our understanding and interpretation of the relevant legislation. Topics addressed include the ability of electors to choose their system of residence, access to corporate property assessment, the constitutionality of the *Alberta Act*, language of instruction, removal of separate trustees, prescribing grade levels and curriculum, and altering jurisdiction boundaries. An effort is made to focus on the human dynamics found within these court cases.

A study is made of fiscal equity in the property tax base and level of tax burden between public and separate school jurisdictions by examining one benchmark year in each of three decades. The impact of funding under the School Foundation Program Fund (SFPF) is reviewed for the year 1973. Funding under the SFPF as modified by the Supplementary Requisition Equalization Grant and other fiscal equalization grants is reviewed for 1983. Funding under SFPF as modified by the Equity Grant is reviewed for 1993. This leads me to conclude that generally separate schools were significantly and increasingly disadvantaged relative to public schools during this period.

Beginning in the mid 1990s, the government of Alberta made significant legislative changes which resulted in full provincial funding, reduction in the number of jurisdictions, and spending restrictions. Two provinces eliminated separate schools through constitutional change. The court cases that adjudicated the impact of these changes on separate schools are reviewed as is the extensive tribulations in Alberta around attempts to put in place an alternative method of expanding separate jurisdictions. Current outstanding issues, including the future of separate schools, are examined through interviews with seven key opinion leaders. I conclude with a belief in the advantage of Alberta's duality in public education and with specific recommendations for strengthening that duality.

Acknowledgments

It is a rare instance in human endeavor that anything of significance is accomplished when the protagonist was able to achieve that outcome without the support of others. The completion of this thesis is not one of those instances. There have been moments of satisfaction and moments of frustration and I owe a debt of gratitude to those who shared in the former and helped address the latter.

I would like to thank my supervisor, Dr. Frank Peters, whose mentoring and Irish wisdom have both guided the process and provided the encouragement needed to stay the course. I also wish to thank my other committee members, Dr. Jose da Costa, Dr. Margaret Haughey, Dr. Alison Taylor, Dr. Mel McMillan, and Dr. John Stapleton with whom it was a pleasure to discuss my work. Appreciation is also extended to Dr. Ernie Clintberg who completed the audit of a randomly selected portion of my interview transcriptions.

My deep interest in the subject matter of this thesis grew out of my professional work life within Alberta's Education ministry. I wish to thank Betty Nally and Tasha Fadish for keeping that part of my world organized. I wish to thank my colleagues Diane Gagnon, Darlene Pruden, Sylvia Veillette, and Warren Young, whose work touched on the same issues, for their support. I also wish to recognize Christina Andrews and Charlotte Landry in the ministry's library and Kelly Vickers and Ida Unger in Corporate Records for their assistance. I want to thank Mat Hanrahan for creating a working environment in which new ideas and learning were encouraged. I have also learned much over the years from my colleagues in Alberta Justice. In particular, I want to thank Bob Maybank and Margaret Unsworth for their wise counsel and exchange of ideas as we worked through many of the associated tribulations over much of the last two decades.

I am reflective of the love and support given to me by my parents, Amanda and Leonard, and regret that the cycle of life did not permit them to experience this achievement with me. It gives me joy to suspect that they are aware of it just the same. I am grateful to my many friends that enrich my experience of life for their understanding during the last few years when I have closeted myself more so than normal. In particular I want to thank my friend Ron Pidskalny who has helped me cope with that most feared dragon of the modern age, the travails of computer technology.

I am grateful to my children, daughter Robin and son-in-law Badry and sons Grant and Brian, for their love and support. It is a great source of satisfaction to observe your children as independent adults successfully charting their own course in life. I am very proud of them. I am also now blessed with grandchildren who have enriched my life beyond measure. My grandsons AbdAllah and Aadl and granddaughters Makboolee, Ameena, and Rushdeeyee give me great hope for the future.

And finally I wish to thank my partner in life, Jessie, for her support in more ways than can be adequately addressed here. I am a person who is slow to start but once started, is reluctant to stop. Jessie understands the need for balance in such obsessions and brings that essential gift to my life. She has provided the love and motivation that was the critical ingredient in completing this thesis. Without her support and encouragement, it would never have been finished. This work is dedicated to her.

Table of Contents

Page

INTRODUCTION 1
- Focus of the Study 1
  - Separate Schools Defined 1
  - Purpose of this Study 2
- Specific Research Questions 4
- Review of Literature 5
  - Origins of Separate Schools in Canada and the North-West Territories 5
  - The Governance and Funding of Alberta School Jurisdictions 8
  - Restructuring 11
  - Attempts to Change the Way Separate Jurisdictions Expand their Boundaries 13
  - Contemporary Issues Relevant to Separate Schools in Alberta 13
- Need for this Study 14
- Methodology and Methods 15
  - Epistemology 15
  - Theoretical Perspective 17
  - Methodology 18
  - Methods 20
- Limitations 23
- Delimitations 23
- Conclusion 24

PART I - The Courts and Separate Schools in Alberta 25

CHAPTER ONE - The Ability to Choose *and* Defining the Terms Protestant and Roman Catholic 26
- Introduction 26
- Federal Statutory Precedent 27
- The Ability to Choose 30
  - *The Bartz Case* (1917) 30
  - *The Neida Case* (1917) 33
  - *Bartz Revisited* (1918) 34
  - *The Shannon Case* (1930) 34
  - *The Bintner Case* (1965) 35
  - *The Schmidt Case* (1976) 37
- Defining the terms Protestant and Roman Catholic 39
  - *The Roschko Case* (1922) 39
  - *The Ulmer Case* (1923) 40
  - *The Hirsch Case* (1926) 43
  - *The Perron Case* (1955) 47
  - *The Starland Case* (1988) 48
- Key Findings 51

CHAPTER TWO - The Allocation of Corporate Property Assessment 54
- Introduction 54
- The Allocation of Property Assessment 54
  - *The Gratton Case* (1915) 54
  - *The Jones Case* (1977) 59

The Calgary Public Case (1981) 62
The Greater Hull Case (1984) 66
The Calgary Separate Case (1985) 70
Key Findings 72

CHAPTER THREE - Issues of Governance: *Alberta Act* Constitutionality, Language of Instruction, *and* Removing Elected Separate Trustees 74
Introduction 74
The Constitutionality of Section 17 of the *Alberta Act* (1905) 74
Alberta Act, s. 17 Reference (1927) 75
Dictating the Language of Instruction *and* Replacing a Separate Board 78
The Mackell Case (1917) 78
The Ottawa Commission Case (1917) 85
The Ottawa Bank Case (1920) 88
Postscript to the *Mackell Case* and the two *Ottawa Cases* 92
Key Findings 93

CHAPTER FOUR - Issues of Governance: Prescribing Grade Levels *and* Curriculum 95
Introduction 95
Prescribing Grade Levels *and* Curriculum 95
The Tiny Case (1928) 96
Bill 30-Ontario Case (1987) 103
The Greater Montreal Case (1989) 110
Key Findings 115

CHAPTER FIVE - Issues of Governance: Altering Geographic Boundaries *and* the Right to Exist 117
Introduction 117
Altering Geographic Boundaries 117
The QAPSB Case (1985) 118
The St. Walburg Case (1987) 123
Reference re Education Act-Quebec (1993) 127
The Jacobi Case (1994) 134
Key Findings 140

PART II - Funding and Separate Schools in Alberta 143

CHAPTER SIX - The School Foundation Program Fund *and* a Review of Fiscal Equalization in 1973 144
Introduction 144
Scope of this Review 145
School Foundation Program Fund 147
Early SFPF Development 147
1973 Review of Equalization 149
Summary 160

CHAPTER SEVEN - The Supplementary Requisition Equalization Grant *and* a Review of Fiscal Equalization in 1983 162
Introduction 162
Supplementary Requisition Equalization Grant 162

SREG Development 163
The Ramsey Formula 165
1983 Review of Equalization 167
Summary 182

CHAPTER EIGHT - The Equity Grant *and* a Review of Fiscal Equalization in 1993 184
Introduction 184
The Equity Grant 184
Equity Grant Development 185
1993 Review of Equalization 187
Summary 206
The Constitutional Question 208

PART III - Restructuring the Governance and Finance of Schools 210

CHAPTER NINE - Regionalization, Full Provincial Funding, *and* Constitutional Change 211
Introduction 211
Funding of Alberta School Jurisdictions 211
Regionalization 214
A New Leader 215
Affirmative Action 218
Litigation and Negotiation 219
Full Provincial Funding 224
A Time for Change 225
Bill 19 and the new Funding Framework 227
Constitutions Are Not Written in Stone 229
Conclusion 233

CHAPTER TEN - Further Guidance from the Courts in Times of Change 235
Introduction 235
The Ontario Home Builders' Case (1996) 235
The Adler Case (1996) 239
The Hogan Case (2000) 245
The PSBAA Case (2000) 249
The Bill 160 Case (2001) 259
Key Findings 266
Conclusion 268

CHAPTER ELEVEN - Issues of Boundary Expansion: Agreement *and* Discord 270
Introduction 270
Initial Attempts at Change 271
A New Vision 277
Negotiations Begin 279
A Diversity of Legal Opinion 280
The Presidents' Proposal 285
The Reaction 287
The Outcome 291

CHAPTER TWELVE - Issues of Boundary Expansion: Legislation *and* Litigation 294
- The ASBA 4x4 Committee's Two-Part Alternative 294
- The Saga of Bill 16 296
- Constitutionality of the Expansion and Services Order 301
  - The Alternative Process 302
  - Litigation 307
- Conclusion 310

CHAPTER THIRTEEN - Current Issues *and* the Thoughts of Key Opinion Leaders 312
- The Interview Group 312
- Shared Facilities 314
  - The Capitalist Denomination 314
  - Learning from Each Other 317
  - Sparsely Populated Rural Areas 319
  - Non-Catholic Students in Catholic Separate Schools 322
- Opting Out of the Alberta School Foundation Fund 324
  - Why Opt Out of the ASFF? 324
  - Ontario's Bill 160 328
- Separate Electors and Choice 330
  - The Alternative Method of Expanding 331
  - Individual Choice vs. Collective Choice for Separate Electors 334
- Re-examining the Constitutional Guarantee 338
- Conclusion 341

CHAPTER FOURTEEN - Personal Reflections *and* Recommendations 345
- The Threads of Passion 346
- Research Questions Revisited 351
  - Historical Relevance 351
  - Post 1993 354
  - Opinion Leaders 356
- The Future of Separate Schools 357
- Recommendations 363
- Parting Thoughts 367

REFERENCES 368
  - General 368
  - Statutes 375
  - Court Cases 378

APPENDICES 381
- **A** - 1973 Assessments, Requisitions, and Instruction Expenditures 382
- **B** - 1983 Assessments, Requisitions, Equity, and Instruction Expenditures 396
- **C** - 1993 Assessments, Requisitions, Equity, and Instruction Expenditures 415
- **D** - 1993 Sample Assessments and Requisitions *and* Regionalizations 434
- **E** - Interview Questions 445
- **F** - Student Enrolments in Alberta and the City of Calgary 447

INTRODUCTION

Focus of the Study

The current *School Act* of Alberta begins with a somewhat unusual feature for provincial legislation, a preamble. This preamble consists of six statements of guiding principle. One of these statements is as follows:

> WHEREAS there is one publicly funded system of education in Alberta whose primary mandate is to provide education programs to students through its two dimensions, the public schools and the separate schools, in such a way that the rights under the Constitution of Canada of separate school electors are preserved and maintained…

The fact that Alberta has two dimensions to its one publicly funded elementary and secondary education system is a defining characteristic of public schooling in the province. Not all provinces in Canada have separate schools within their publicly funded system, but Alberta is not the only province that does. Among those provinces that do have publicly funded separate schools, the rules of governance and finance applicable to them are not consistent from province to province. And some provinces that have had publicly funded separate schools in the past, no longer have them.

The origins of the publicly funded separate schools found in some of Canada's provinces are an integral component of the founding of Canada as a nation. No greater issue existed for the Fathers of Confederation than the separate school question (Sparby, 1958). It was a question of cultural and religious difference. Efforts to resolve that question enabled two nations to come together to form a single federation. Over one hundred and thirty-nine years later, Canada, while not without its challenges, is a lighthouse example in our conflicted world of how people of different cultures and religions can live together harmoniously in one country.

Separate Schools Defined

The *Constitution Act* (1867), formerly known as the *British North America Act, 1867*, protected denominational (religious) schools in any province if they existed under the laws serving the area of that province just prior to the province joining confederation. Denominational schools were also referred to in this Act as dissentient schools, which were those not conforming with the majority and thereby serving a dissenting minority. The *Constitution Act* (1867) therefore introduces and protects what are referred to as minority religious education rights. This ensured those specified religious minorities that had, by law, right of access to denominational schools prior to joining confederation would not lose those rights and be forced into schools operated by those of the majority religious persuasion for the privilege of becoming part of a new province of Canada.

Five of Canada's ten provinces had undisputed relevant minority religious education legislation at their time of union. The *British North America Act* specifically protected separate schools of Roman Catholics in Upper Canada (Ontario) and Protestants and Roman Catholics in Lower Canada (Quebec). Existing minority religious education rights in Saskatchewan and Alberta were protected at the time they became provinces of Canada in 1905. The most extreme example of dissentient schools being constitutionally protected was contributed by the last province to join confederation. Newfoundland had six different denominations with separate school rights under the laws of that province just prior to it becoming part of Canada in 1949, with one additional denomination being added by constitutional amendment in 1987.

In Alberta, the right to establish separate school districts is available to either the Protestant or Roman Catholic electors within a public school district, whichever are in the minority. Usually Alberta's separate schools are Roman Catholic, but not always. Protestant separate schools exist in St. Albert and St. Paul. With both public schools and separate schools, there is a duality to Alberta's public school system with complex cultural, religious, political, educational, and constitutional rights issues. Alberta has a century of experience with the diversity of this duality. There has been occasional conflict over such issues as residency and property taxation. In the last decade, issues related to the expansion of separate jurisdiction boundaries and the appropriateness of public and separate jurisdictions sharing school facilities have come to the forefront.

Purpose of this Study

The purpose of my research was to gain an understanding of the impact of separate school rights on the governance and finance of Alberta's elementary and secondary education system. This study examined the legal parameters defining those rights, the struggle for equity in access to services between public and separate schools, and the issues, both past and current, which have and continue to challenge both our public and separate schools as well as the provincial government. The separate school experience in other parts of Canada was also addressed to gain context and perspective, especially where such events have relevance to the provision of separate schools in Alberta.

Separate schools are based on the principle that one group in society has separated itself from the rest of society for the purpose of providing educational services to its students. Consequently, this research explored the differing perspectives and objectives of separate and public school leaders. It also examined the perspective of the provincial government, which sometimes differs from either the separate or public school leaders. Provincial efforts to achieve governance or financial efficiencies or to address political issues often affect the separate and public components of our publicly funded school system in different ways.

The perspectives contributed by the media will sometimes significantly shape society's understanding of related issues or, depending on one's own perspective, the lack thereof. The media are often the primary recorders of events and a careful, relevant review becomes an indispensable element of the research of any sociopolitical issues. The media usually struggle and strive to dependably deliver the divergent or dichotomous and divisive perspectives on most subjects. They are, therefore, often a wealth of comparative viewpoints. It is recognized that the media are not always completely neutral as they, too, are often dealing with a context.

Relevant legislation, and in some cases its evolution, was reviewed and discussed to seek understanding of the initial intentions and practical implications of the statutory products of our elected representatives. Court decisions at all levels, from Provincial Courts to the Supreme Court of Canada, have been as relevant to shaping our understanding of the law and its applications as have our legislators. My research also examined court decisions that have significantly shaped our interpretation and understanding of the governance and finance of separate schools, particularly as they effect and represent precedents for Alberta.

Since 1993 under the Progressive Conservative government of Premier Klein, there have been more changes in the way elementary and secondary education is governed and financed in Alberta than had occurred in all the province's previous history. Those changes have had a significant impact on both the public and separate school systems of the province. Some of these changes have enabled public and separate leaders to find common ground while leaving them on opposing sides of other changes. Court cases have been launched either to find their way to the Supreme Court of Canada or to be negotiated away over extended periods of hard work by all parties. A primary purpose of my research was to thoroughly examine those changes as well as the successes and failures in attempts to resolve issues specifically relevant to the provision of minority religious education rights.

Specific Research Questions

Within the discourse of this thesis, my research attempted to address the following questions:

1 What is the relevance and impact of separate school rights on the governance and finance of Alberta's public education system?

   1.1 What are the specific historical, legislated, and judicial origins of separate school rights in Canada and the North-West Territories that define the separate school rights applicable to the Province of Alberta?

   1.2 How were separate school rights interpreted, modified, implemented and financed in the Province of Alberta up to 1993 when the Progressive Conservative government under Premier Klein came to power?

2 What specific issues and changes have significantly affected the governance and finance of separate schools within the public system since 1993?

   2.1 What was the experience of separate school jurisdictions, within the public school system, resulting from the reduction in the number of school jurisdictions and the move to full provincial funding?

   2.2 How have the courts furthered the understanding of separate school rights since 1993?

2.3 What issues evolved in the multiple attempts to change the way the boundaries of separate school jurisdictions are expanded beginning in 1993 and why did a decade of extensive effort result in failure?

3 What are the beliefs, perceptions and viewpoints of recognized opinion leaders from the various sectors or communities that have influenced the political dynamic relevant to the provision of separate school services within Alberta?

  3.1 What are the perceptions and viewpoints in respect to relevant changes since 1993?

  3.2 What are the contemporary or outstanding issues related to the governance and finance of separate schools?

Review of Literature

This literature review addressed a plurality of themes. First to be considered was the pre- and post-confederation origins of separate schools in Canada and the North-West Territories. The governance and funding of school jurisdictions in Alberta prior to 1993 was then addressed along with the impact of the *Charter of Rights and Freedoms*. The section on restructuring focused on the reduction in the number of school jurisdictions, and the move to full provincial funding of school jurisdictions. Then consideration was given to the repeated attempts to change the way separate jurisdictions in Alberta expand their boundaries. Finally, contemporary issues relevant to separate schools in Alberta were identified.

Origins of Separate Schools in Canada and the North-West Territories

After the British defeated the French on the Plains of Abraham near Quebec City in 1759 and Montreal fell in 1760, half the North American continent changed hands and the King of England now had 65,000 new French-speaking Catholic subjects. In the Articles of Capitulation, Vaudreuil, the Governor General of New France, managed to negotiate one critical concession: "the free exercise of the Catholic, Apostolic, and Roman Religion" (Gillmor and Turgeon, 2001: p. 133). This was a dramatic concession, given that in Protestant England, Catholics had no religious rights and severely restricted civil rights. Following four years of lobbying by the British Governor of the Quebec

Colony, Sir Guy Carleton, the British House of Commons passed the *Quebec Act* in 1774 which guaranteed French Canadians their religion, allowed them to hold public office, and restored French civil law. After thousands of Loyalists moved north as a consequence of the American Revolution, the King signed the *Constitution Act* of 1791 dividing the Colony of Quebec into Lower Canada (Quebec) and Upper Canada (Ontario). John Simcoe, the first Lieutenant-Governor of Upper Canada, wanted to recreate Britain in Canada and restore the colonial lustre that had been lost with America's independence (Gillmor and Turgeon, 2001).

Towards confederation. In the aftermath of the American Revolution, the British government became convinced that the absence of a state church in the American colonies was the most significant factor that led to the breakup of the first British Empire. Subsequent colonial policy gave emphasis to elevating the Church of England to the status of a state religion in British North America. Bishop John Strachan of Toronto led efforts to extend the Church of England's influence into the realm of state schooling. Consequently, it was Anglican and not Roman Catholic lobbying which resulted in the right to establish publicly funded separate or dissentient schools being first stated in the *Common School Act* of 1841. This followed the *Act of Union* of 1841which joined the colonies of Upper and Lower Canada into a single political entity. Between 1841 and 1863 a series of acts created the "separate schools" of Canada West (Ontario) and the "dissentient schools" of Canada East (Quebec), allowing Protestant and Catholic parents to establish their own publically funded schools, subject to provincial controls over the curriculum and teachers (Young and Levin, 1998).

Section 93 of the *British North America Act* (1867) gave the legislature of each province exclusive authority to make laws in relation to education, with an important exception. A key condition of Confederation was the preservation of the denominational influence over education existing in Quebec and Ontario. In 1896, Sir Charles Tupper, one of the Fathers of Confederation, made this statement in the House of Commons during a review of federal education policy: "I say…that but for the consent to the proposal…that in the Confederation Act should be embodied a clause which would protect the rights of minorities, whether Catholic or Protestant, in this country, there would have been no Confederation" (Sparby, 1958: p. 42).

The North-West Territories. In June 1870, the Queen issued a proclamation admitting the North-West Territories into the Union. It initially included "all of modern Canada except British Columbia, the coast of the Great Lakes, the Saint Lawrence River valley and the southern third of Quebec, the Maritimes, Newfoundland, and the Labrador coast" (Wikipedia, 2006: Northwest Territories). The Canadian House of Commons passed the *North-West Territories Act* in 1875, which set up a distinct government for the territory complete with resident Lieutenant Governor and Assembly. Paraphrasing the more elaborate wording, section 11 of this *Act* provided that the Lieutenant Governor, with the consent of the Assembly, shall pass all ordinances in respect to education, but it shall therein always be provided that the minority of the rate-payers in any district, whether Protestant or Roman Catholic, may establish separate schools and shall be liable only to assessments of such rates as they may impose upon themselves.

The *School Ordinance* of 1884 for the North-West Territories provided for a central Board of Education operating in two distinct sections, Protestant and Roman Catholic. Each section was to have under its control and management the schools classified as being of the same religious faith as that section. The classification of districts was really fourfold: Protestant and Roman Catholic public school districts, and Protestant and Roman Catholic separate school districts, the latter covering the same areas or boundaries as the former but established by the minority groups of residents. An amendment in 1886 removed the necessity to designate public school districts as Protestant or Roman Catholic, although the practice continued in some instances during the territorial period. In 1892, the Board of Education with its two distinct sections was abolished and replaced with a Council of Public Instruction made up of members of Executive Committee resulting in the elimination of sectarian control of education at the territorial level (Sparby, 1958)

The *School Ordinance* of 1901 replaced the Council of Public Instruction with a Department of Education headed by a member of the Executive Council. It did not alter the operation of separate schools and became the referent legislation containing separate school rights protected by the *British North America Act* of 1867 at the time Alberta and Saskatchewan joined confederation in 1905 (Fenske, 1968).

***Alberta and Saskatchewan*.** In early 1905, Prime Minister Wilfrid Laurier introduced into the House of Commons the first of two identical bills providing for the establishment of the Provinces of Alberta and Saskatchewan. Differences of opinion over the separate school question developed into a political crisis and nationwide controversy. Minister of Interior, Clifford Sifton, resigned from cabinet in protest against the school clause and a serious split in Liberal party ranks threatened. Laurier explained that since religious minorities in the Territories already enjoyed the privilege of establishing separate schools, it is in keeping with the intention of section 93 of the *British North America Act* (1867) that these privileges be preserved. Conservative opposition leader, Robert Borden, offered the counter opinion that the Territories were not joining the union in 1905 but in fact had joined in 1870. At that time, no minority school rights existed as these had been introduced into the Territories by the Dominion Government itself through the *North-West Territories Act* of 1875. Borden took this position even though section 93(1) of the *British North America Act* of 1867 specifically refers to those rights by law "in the *Province* at the Union" and not in the *Territory* at the Union. Mr. Sifton had no objection to the continuation of separate school rights, but was concerned that referencing in the bills to the principles sanctioned under the *North-West Territories Act* might be interpreted as a return to the two dimensional sectarian system of central governance of 1884. The wording of the clause was subsequently changed to reference the *School Ordinances* of 1901 instead and the threatened political crisis was averted. On September 1, 1905, the Provinces of Alberta and Saskatchewan came into being (Sparby, 1958).

The Governance and Funding of Alberta School Jurisdictions

In the evolution of separate schools in Alberta prior to 1993, three issues have been addressed: the consolidation of the governance of school jurisdictions in Alberta, the method of funding school jurisdictions, and the relevance of the *Canadian Charter of Rights and Freedoms*.

***Consolidation*.** During the 1890s, the Territorial Government had added a clause to the *School Ordinances* permitting one rural school district to enter into an agreement with another for the education of its children. However, the first actual union of rural districts was not attempted before 1913 when the Alberta Government made another addition to the *School Ordinances* permitting the establishment of consolidated districts. These consolidated districts were formed by joining together about four adjacent public school districts under a single board of trustees. The peak of this movement was reached in 1922 when there were 217 districts in 68 consolidations (Sparby, 1958: p. 200).

The newly formed Social Credit Party received an overwhelming majority in the provincial election of 1935. William Aberhart became Premier and Minister of Education. Legislation was passed in 1936 enabling the establishment of large units of school administration called "divisions" from any number of rural public school districts, either by order of the Minister of Education or by request of the boards of the rural districts. A process was provided for the boards of public school districts with a Protestant or Roman Catholic majority to be excluded from the division "on account of dissatisfaction of the board with facilities for religious education" (Fenske, 1968: p. 145). Rural separate school districts were not given the right to form large units of school administration but would continue to establish separate districts one public district at a time.

The *County Act* was passed in 1950 and provided that a single local governmental body would carry out the functions previously performed by a municipal council and a school division board (Young and Levin, 1998). No less than three members of county council were to be appointed to the school committee. As the Act was worded in 1950, there was no prohibition of separate school electors, who had been elected to county council, from being appointed to the school committee and becoming directly involved in public school matters. In 1960, the Act was amended and separate school electors were no longer eligible for membership on a county school committee (Fenske, 1968).

The funding of schooling. Historically, Canadian schools were primarily funded locally through parental fees and local property taxes or, in the case of religious schools, support from the church (Young and Levin, 1998). In 1905, Alberta's rural school districts received, on average, 68 percent of their revenue from property taxes and 27 percent from provincial government grants. By 1925, local property taxes provided 84 percent while provincial funding had declined to just 14 percent. The government's share did rise following 1925 to well over 30 percent by 1950 (Sparby, 1958: p. 193).

In 1961, a revised system of school finance was introduced in Alberta. Under the School Foundation Program Fund, a provincial property tax replaced most of the local education property taxes. In 1961, total provincial funding reached an all time high at 92.3 percent with local property taxes contributing a mere 5.4 percent. The proportion of funding provided by the province gradually declined until, in 1992, the province provided 58.3 percent of school funding with 36.2 percent coming from local taxes (Elhav, 1998: p. 212).

Separate school districts were exempted from compulsory inclusion in the School Foundation Program Fund due to their protected right to be liable only to assessments of such rates as they impose upon themselves. A separate school district could, by board resolution, choose to participate in the Fund, or a separate district could, by board resolution, subsequently withdraw from the Fund. Not participating in the Fund meant not participating in the majority of provincial grants supported by the Fund. All separate districts chose to participate. The Fund initially placed school districts with a low property assessment per pupil on almost an equivalent financial position to districts with a high assessment per pupil. "This proved of particular benefit to the separate school districts" (Fenske, 1968: p. 167).

The Canadian Charter. The *Canadian Charter of Rights and Freedoms*, contained in the *Constitution Act* (1982), heralded a new era in human rights in Canada. It applies to both the federal and provincial legislatures and governments or government agencies (Young and Levin, 1998).

Section 2 of the *Charter* provides for the fundamental freedom of conscience and religion. Section 15 provides that every individual is equal under the law without discrimination based on, among other things, religion. Recognizing the potential conflict between rights under Section 93 of the *Constitution Act* (1867) and the newly entrenched freedom of religion and equality rights, the framers of the *Charter* included section 29 (Foster and Smith, 2001, May). Section 29 states, "Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools."

Restructuring

Ralph Klein was elected leader of the governing Progressive Conservative Party in Alberta in December 1992. The Klein government was elected in June 1993 on a platform of change and subsequently undertook significant restructuring of the elementary and secondary school system in Alberta. Kachur and Harrison (1999) offer this assessment on the restructuring of education in Alberta under Premier Klein:

> Nowhere has the contest for the future of education been more pronounced than in Alberta. Indeed, in education, as in deficit reduction, healthcare, and welfare reform, Alberta has provided the model for the rest of the country and has forced the federal liberal party and various provincial governments to reorganize their priorities along similar neo-liberal lines (p. xxi).

Taylor (2001a) sees the government's restructuring of education and the funding cutbacks introduced during the first three years of Klein's term as Premier as having been designed to take power away from teachers and school boards.

The reduction in the number of school jurisdictions in Alberta. The Government of Alberta forced smaller rural school boards to merge. Between 1993 and 1994 the number of school boards were reduced from 141 to 63 and the number of locally elected school trustees declined from 1,184 to 435. The need to increase the efficiency of the education system was cited as the motivating factor (Evans, 1999: p. 152).

Initial estimates by the Alberta School Boards' Association indicated that the government was hopeful of saving as much as $20 million annually from this reduction. The Ministry first suggested a possible saving of about $13.5 million but later provided a slightly more conservative figure of $12.9 million in an affidavit to the courts (Peters, 1999: p. 86).

Given the significant extent of the forced reduction of Alberta school board and trustee numbers, supporters of locally governed education might be concerned about the future of school boards in Alberta. Evans (1999) identified three reasons why school boards will survive. First, Alberta's Conservative Party wants to remain in power and moving education policy further to the right might jeopardize the party's support from the political centre. Second, abolishing boards will drop all the problems on the government's doorstep. The government needs its school board subsidiaries to keep education running and share the political risk. Third, Alberta has a strong tradition of supporting locally governed public education.

***Full provincial funding of school jurisdictions in Alberta*.** By the time of the first election of the government of Premier Klein in 1993, the idea that social spending was out of control in Canada was part of the platform of both Conservative and Liberal parties throughout the country (Peters, 1999). The significant changes in education announced in January 1994 by the Alberta government included the centralization of revenue collection and removal of the ability of individual school districts to raise funds through local taxation (Neu, Peters, and Taylor, 2002). The right to collect property taxes for education had been exercised by school boards since before Alberta became a province, but by the 1992-93 school year, the differences in expenditure per student among school jurisdictions ranged from $3,663 to $22,582. (Peters, 1999: p. 87).

The province initially announced its intention to withdraw taxing authority from all school boards. A number of Catholic boards claimed that they had a constitutional right to collect school taxes from their own supporters. In order to move the legislation forward and avoid an extended judicial process, the legislation was amended to permit separate boards to opt out of the centralized funding and continue to collect their own property taxes. Separate boards were not permitted to raise more money from local taxation than would be received from the central provincial funding system (Peters, 1999).

In 1990, the Government of Alberta had proposed a funding change that would see all commercial property taxed at a uniform rate by government alone. School districts would no longer have access to the non-residential assessment but would retain the residential and farmland assessment for local taxation (Elhav, 1998). Provincial legislators could not reach consensus on this scheme of partial centralization of the local tax base. The 1994 changes removed school board access to the entire tax base.

Peters (1999) offers this evaluation of the funding changes: "The changes to educational funding have considerably reduced the huge differences in the amount of money available to school boards on a per-student basis and have put in place a more equitable funding system" (p. 87). Lost was the ability of school boards to make discretionary decisions regarding total dollars to be invested in the local jurisdictions.

Attempts to Change the Way Separate Jurisdictions Expand their Boundaries

In 1992, Duke and Peters prepared a report for the Alberta Catholic School Trustees' Association on the issue of changing boundaries of Catholic school districts. The report noted that between 1963 and 1973, the matter of the strictures placed on Catholic school district boundary changes was raised a total of eight times in briefs to government. During the subsequent twenty years, the Association consistently raised the same issue in its communications with government and the various Ministers of Education. The report recognized that the small, rural Catholic school district was in serious financial, and at times educational difficulty. The report proposed an alternative be considered to the existing way the boundaries of Catholic jurisdictions are expanded.

During the decade that followed the report of Duke and Peters, three different attempts were made to change the processes used to expand the boundaries of separate jurisdictions. This thesis examines those efforts and the reasons for their failure.

Contemporary Issues Relevant to Separate Schools in Alberta

In 1995, Ksiazek referenced concerns about political attempts at effecting the demise of publicly funded Catholic schools. These comments appear somewhat prophetic given that by 1997 both the Provinces of Newfoundland and Quebec initiated constitutional amendments, approved by the House of Commons, which did away with denominational school rights in those provinces (Smith and Foster, 2001, March).

Lawton (1998) asks but does not answer a number of important contemporary questions, including, "is it good that denominational systems have been abandoned in Newfoundland and Quebec", and "is it good that seven of ten provinces have full provincial funding of elementary and secondary education" (p. 20)?

The fully funded Catholic separate system appears to have provided a model that legitimizes in the minds of some the demands of other religious groups for inclusion in our fully funded public education system (Taylor, 2001b). "Parents from Hindu, Christian Reformed, Muslim, Mennonite, and Sikh religious backgrounds collectively petitioned the Ontario courts in search of support for religious schools for their children" (Martin, 1996: p. 44).

Sweet (1997) stated that we need to re-examine the issue of the constitutional guarantee for public funding to Catholic schools in light of today's new multicultural, multi-religious reality. Vandezande (1999) said that education, because it deals with questions of ultimate importance, is inherently religious or value-based. It is ignorance about religion, not teaching about it, which breeds disrespect and which will lead to divisiveness in our society. Dalton (1999) proposed that "schools do not embark on the perilous path to critical thinking flanked by spiritual voids" (p. 61).

Need for this Study

The need for this study is first of all justified by the scarcity of existing research on the issues of governance and finance of separate schools. Sparby's (1958) doctoral study on the history of the Alberta school system to 1925 provides a particularly detailed account of schooling during the territorial period and the first twenty years of the provincial period. Fenske (1968) completed his Doctoral study on the evolution of the formal structure of separate schools in the prairie provinces. Fenske reviewed the conditions and legislation, both pre- and post-confederation, relevant to the governance of separate schools. My research did not replicate the work of Sparby or Fenske, but referenced only those milestone historical references and events that aid in defining and understanding Alberta's system of separate schools.

A great deal has transpired in the years since Fenske and Sparby completed their work. Legislation, litigation, and consternation have marked the continued evolution of separate school governance and finance during that period. This has been particularly so in Alberta since 1993.

Separate school jurisdictions have been affected by significant changes, including the amalgamation of school jurisdictions, the removal of local school board access to the property tax base, the introduction of Francophone school authorities, and the repeated attempts to amend the process by which the boundaries of separate school jurisdictions are expanded. Available research on these experiences gives little or no attention to the specific impact on separate schools. Changing social understandings question the appropriateness of separate schools in contemporary society. These issues justify a research initiative that will thoroughly examine the historical background and processes of these unprecedented events, particularly as they impacted the governance and finance of separate schools.

Methodology and Methods

In order to better understand and define the scope of my research, what it is and what it is not, I found it beneficial to highlight the social research methodologies and methods used for my dissertation by describing my approach in each of the four basic elements of any research process as identified by Michael Crotty: epistemology, theoretical perspective, methodology, and method (Crotty, 1998).

Epistemology

An epistemology is our way of understanding and explaining how we know what we know. For example, the epistemology of ***objectivism*** holds that meaning and reality exists apart from any consciousness. For example, a flower is a flower, and holds no inherent relevance to shape moods of joy or sorrow. This realist's perspective is not well suited to the realm of social research, where our own understanding of reality drives meaning, and that understanding can vary significantly between individuals and groups of individuals. An epistemology that more appropriately describes my research is ***constructivism***.

The constructivist epistemology holds that there is no objective truth waiting for us to find it. There is no meaning without a mind. Meanings are not discovered, but constructed by human beings as they engage with the world they are interpreting (Crotty, 1998). It is understood that experience exists only in its representation; it does not stand outside memory or perception. The meanings of facts are always reconstituted in the telling, as they are remembered and connected to other events (Denzin, 2000). Perception emerges out of our relations to situations and environments (Green, 1994). Minority groups develop different interpretations of the world around them based upon their experiences in society and treatment by the dominant group (Kahn, 1992).

Ontology. Where epistemology attempts to define our method of knowing, ontology attempts to address what we know. It is the study of being; it is the study of the real, or at least what is real for each of us. Ontology sits alongside epistemology informing the theoretical perspective; issues of ontology and epistemology tend to emerge together (Crotty, 1998).

The objectivist assumes an ontology of realism. Realities exist outside of the mind and the knower must have an objective detachment and value freedom (Crotty, 1998). However, Denzin and Lincoln (2000) tell us that the constructivist paradigm assumes an ontology of relativism. Based on the experience of each individual, different understandings of reality emerge. Different cultures and religions define their realities in different ways. Berg (1995) observes that meanings derive from the social process of people or groups of people interacting. These meanings allow people to produce various realities.

The researcher. Steier (1991) tells us that the research process must be seen as socially constructing a world or worlds with the researcher's world included in, rather than outside the body of his or her research. Depending on the questions we ask, the answers we deem responsive, and the data we deem relevant, we as researchers construct that which we claim to find. As part of the credibility of the research project, the researcher must lay out any preconceptions, bias, or past experiences that makes the project significant to the researcher and that may effect how the interpretation takes shape (Plager, 1994). We understand and become aware that our own research activities are telling us a story about ourselves (Steier, 1991).

I served as an executive manager in both the provincial Ministries of Education and Learning both before and during the identified significant changes in education made during the first decade of Premier Klein's Conservative government. I often had lead or "key contact" responsibility for issues impacting the governance and finance of Alberta's school jurisdictions, and more particularly, issues affecting Alberta's separate school jurisdictions. Being immersed in the provincial government for an extended period of time instilled in me a particular social construction based on a respect for cultural diversity balanced by a generous dose of pragmatism, which strives for the often-elusive practical approach to issues.

This dissertation forced me to revisit my personal beliefs and values. I strove to sort out all the variant viewpoints, including my own. I consider it important to confess that, while I am not a member of a protected religious minority, I believe in parental choice in education, wherever there are sufficient numbers to warrant public funding of that choice. The problem with my belief is that the concept of "sufficient numbers to warrant public funding" is very subjective. It raises the question of reasonableness. Would a "reasonable person" find the numbers sufficient? But when people are dealing with the education of their children and are differentiated by distinct cultural or religious perspectives, a functional definition of reasonableness is often elusive.

Theoretical Perspective

A theoretical perspective is an approach to understanding and explaining society and the human world. It speaks to the assumptions about reality that we bring to our research work. For example, the theoretical perspective of *positivism* holds that knowledge is based on natural phenomena and their properties and relations are verifiable by empirical science. Positivisim is objectivist by definition, and therefore normally not well suited to social research. While empirical data are referenced in my comparative review of the funding of public and separate school jurisdictions in Alberta, the theoretical perspective I believe was most appropriate for the majority of my research is *interpretivism*.

The interpretivist approach "looks for culturally derived and historically situated interpretations" of the social world (Crotty, 1998: p. 67). This short statement of what this approach seeks out, is a succinct descriptor of a dual public education reality, differentiated by religion and established as a necessary component in the founding of our country.

"Interpretation is an act of imagination and logic. It entails perceiving importance, order, and form in what one is learning that relates to the argument, story, and narrative that is continually undergoing creation" (Peshkin, 2000: p. 9). There is always a tension in interpretation, resulting in the interpretive researcher experiencing multiple claims on understanding. Some claims come from the subjects of the interpretation, which themselves can be multi-perspective, while others derive from the interpreter's own lived circumstances. "Prejudgements and prejudices cannot be set aside, since they have so much to do with shaping those circumstances" (Green, 1994: p.

438). These must be acknowledged and discussed. We as researchers "are beings who are engaged in and constituted by our interpretive understanding" (Leonard, 1994: p. 52).

Methodology

A methodology in social research represents the strategy, process or design behind the researcher's choice and use of particular methods, and links that choice to the desired outcomes. For example the methodology of *ethnography* involves the study of human cultures. It has become virtually a household word in professional education, and it is a rare research project that does not have some ethnographic procedures in the research design (Berg, 1995). My project was no exception. However, in ethnography, culture is not to be called into question; it is not to be criticized, least of all by someone from another culture. Instead, one is to observe it as closely as possible, attempt to take the place of those within the culture, and search out the insider's perspective (Crotty, 1998). This dissertation has used primarily an *historical research* methodology with a focus on legal constraints.

Historical research. "Historical research attempts to systematically recapture the complex nuances, the people, meanings, events, and even ideas of the past that have influenced and shaped the present" (Berg, 1995: p. 161). But historical studies must do more than just create accounts that readers find highly meaningful (Rule, 1997). We must study the relationship among issues that have influenced the past, continue to influence the present, and will certainly affect the future. "This provides access to a broader understanding of human behavior and thoughts than would be possible if one were trapped in the static isolation of one's own time period" (Berg, 1995: p. 162).

Good historical research invites examination of phenomena that emerge. Within this approach, "people have not only a world in which they have significance and value but...different concerns based on their culture, language, and individual situations" (Leonard, 1994: p. 50). As in phenomenological research, we are asked to attempt to set aside all our previous habits of thought, return to unadulterated phenomena, call into question our whole culture, and attempt to recover a fresh perception of existence, one unprejudiced by acculturation (Crotty, 1998). Such an interpretive study "should articulate a politics of hope. It should criticize how things are and imagine how they could be different" (Denzin, 2000: p. 916).

Past influences the present. The November 30, 2002, edition of the Edmonton Journal contained an article arising from an interview with the Executive Director of the Public School Boards' Association of Alberta in advance of that association's presentation to the Alberta Commission on Learning scheduled for December 2. The article contains the following statements:

> The submission also recommends that only Catholics should enroll in the separate school system. And when it comes to building new schools, there is no justification for building a Catholic school before a public school, says the submission.
>
> When asked if the association is trying to ruffle feathers… "I hope the submission will provoke an honest and very candid conversation about what is happening in the province."
>
> "I don't want to ruffle feathers, and there's nobody in the association who wants it to ruffle feathers, but we do think that silence about these important and sensitive issues has worked a disservice for education in the province, and we think it's time to end the silence."
>
> …chairman of the Edmonton Catholic school board, said…he was "extremely disappointed with the association's recommendations about separate schools" (Lord, 2002: p. B5).

Why does a leader in educational governance choose to openly propose such highly adversarial positions? He advocates that student attendance in one component of our dual public system should be limited, and that one part of that duality should be second in line to the other in the need for new school facilities. While his proposals are quite controversial, he assures that he and his association have no wish to disturb other stakeholders.

The answer as to why such controversial advocacy exists lies not in our contemporary situation, but lies in over a century and a half of cultural and political evolution. Only a better understanding of that process can begin to illuminate today's apparitions. What is clear is that I was not dealing with some stodgy topic of old that holds no relevance today. Minority religious education rights are very much a contemporary issue. Adapting a quote from Crotty (1998), "there is no history *for* [people]; there is only history *of* [people], made by [people] and in turn making them" (p. 150). We are individually responsible for the decisions we take when we seek to hide behind the facade of the organization, "a situation where the organization is not only reified but deified" (Haughey, 1999: p. 10).

Methods

The fourth element in the structure of my research process was the actual methods employed. Methods are the techniques or procedures used to gather and analyze the data. There were two major sources of data for my research: documents and interviews. The types of documents examined are listed below.

It is important to not just identify the method, but to also address the specific techniques of the method, the settings used, and role of other participants. Crotty (1998) identified a number of methods that were appropriate and valuable tools in bringing together the divergent components of my project, including *theme identification*, *narrative*, and *comparative analysis*. But the methods I believe impacted most on my research are *document analysis*, *reflection*, and *interviews*.

Document analysis. Berg (1995) stated that the sources of data used in historical research parallel those of many other social scientists and include confidential reports, public records such as court decisions, government and other stakeholder documents, essays, and newspaper editorials and stories. In other words, document analysis is an inescapable and essential component of any study of human interaction. Whether dealing with events of the far past or the recent past, the documents left behind are always a key data source and represented a significant part of my research.

The following types of documents were analyzed and used because of their relevance to my study:

1. Canadian, territorial and provincial legislation that defines the origins and parametres for the governance and finance of separate schools in Alberta.
2. Canadian court cases that address specifically legislation and issues related to the governance and finance of separate schools, which have relevant outcomes for Alberta, and the focused observations of other researchers in regard to those cases.

3. Alberta provincial government studies, financial reports, and documents of communication within the public domain relevant to the governance and finance of separate schools. Great care was taken to ensure that no Ministerial briefing notes or anything else that might be considered *confidential* became part of this study.
4. Alberta school jurisdiction and trustee association reports and documents of communication within the public domain.
5. Print media references to relevant issues and events.
6. Personal notes providing dates, viewpoints, and outcomes of meetings on relevant change issues, involving the provincial government and school trustee associations.

Reflection. "If we want to deal in human knowledge that has validated meaning, the pathway is that of observation and experiment invoking the evidence of the senses" (Crotty, 1998: p. 26). This appears to place a high value on the situation where the researcher has had the good fortune to have actively participated in the human interactions under study and can bring to the research activity his or her own reflections. As noted earlier, having been immersed in the relevant issues on behalf of the provincial government for an extended period of time, I came unavoidably to the study with the label of a partisan participant who has confessed his biases.

Being a participant and experiencing the issues and conflicting perspectives associated with significant changes has been a privilege and has often afforded me access to situations and perspectives not generally available. Detailed personal notes from those experiences were valuable. Striving to move forward issues defined by cultural and religious difference has also been a challenging and often a hair-pulling frustration. "Experience is messy and so is experiential research," but it is a participant's experience and not a researcher's interpretation or reconstruction of it that makes a difference to understanding (Clandinin and Connelly, 1994: p. 417). Theodore Roosevelt offered this wisdom: "it is not the critic who counts…the credit belongs to the man who is actually in the arena" (Roosevelt, 1910, April 23).

This background of long-term participation in relevant issues provided this researcher with an opportunity, perhaps obligation, to reflect on those experiences and attempt to share relevant outcomes. Denzin (2000) referred to experiential research as producing a performance text.

> A good performance text…must be political, moving people to action and reflection…It is understood that experience exists only in its representation, it does not stand outside memory or perception…the reflexive, performed text asks readers as viewers (or coperformers) to relive the experience through the writer's or performer's eyes…This allows them to relive the experience for themselves (p. 905).

Interviews. When dealing with a topic anchored in cultural or religious diversity, one must expect strong and biased viewpoints by definition. I believe that for any such interviews to be credible and useful, they must be comprised of a purposive sample of recognized opinion leaders and be firmly on the record. Leadership is often the critical ingredient in issues of cultural or religious diversity.

Guba (1981) tells us that purposive sampling is intended to maximize the range and diversity of information uncovered. I have concluded my research with a total of seven interviews with individuals who are recognized opinion leaders from various sectors that play a vital role in shaping issues associated with my research. The interviews represent, with one noted exception, one interview from each of the sectors, including the Roman Catholic Church, the Provincial Legislature, the Alberta School Boards' Association, the Alberta Catholic School Trustees' Association (two interviews), the Public School Boards' Association of Alberta, and academia. These interviews focused on the results of the changes since 1993 and contemporary or outstanding issues related to the governance and finance of separate schools in Alberta.

The question might be asked that if these interviewees were recognized opinion leaders, would not their opinions on assorted topics already be a matter of public record? Perhaps, in part, but ready accessibility of opinions for comparative purposes may not be easily obtained or well focused. Every effort was made to craft questions in order to add value, understanding, and comparability to organizational information that might already be partially available.

Individuals to be interviewed were selected based on the following criteria:

1. The perceived level of relevant knowledge and interest in minority religious education rights and the resultant governance and finance of separate schools in Alberta.

2. The individual was agreeable to being interviewed by me and to have his or her opinions included in the discourse of my dissertation.
3. The individual is recognized as a leader of his or her sector.
4. How much opinion the sector leader has contributed to the public discourse of related issues.

Transcripts from the interviews were shared with those interviewed to ensure accuracy. In addition, an audit was performed, by a third party doctoral graduate, of the interview transcripts for one of the nine interview questions, chosen at random, to ensure that the interview data support the related discussion in Chapter Thirteen.

Limitations

The following limitations were inherent within the design of this study:

1. The results of this study are limited by the methodology and methods chosen. Since the study used document analysis, personal reflection, and purposive interviews, other data that may be available through alternative methodologies or methods were not included.
2. The limited amount of similar research limits the comparability of this study.
3. The results of this study were limited by my personal belief and experience structures.
4. The study was impacted by the fact that I was an active participant in the process over a number of years, that such participation occurred a number of years ago, and my recollection of that participation is supported by my personal notes.
5. The study was limited by the people willing to be interviewed.

Delimitations

The study had the following delimitations imposed in order to bring form and context to the endeavor:

1. Only events and issues influencing the governance and finance of separate schools were examined. Issues of programming and religious content were referenced only where they impacted decisions related to governance and finance.
2. Events and issues beyond Alberta were examined only where relevant to the governance and finance of separate schools in Alberta.

3. The number and choice of research themes addressed limited the study.
4. The number and choice of sectors selected for the purposive interviews and the number of opinion leaders selected from each sector limited the study.
5. The questions selected for the purposive interviews limited the study.

Conclusion

In social research, there are no crucial tests of theories; we don't prove things right or wrong. The real test has always been how useful or interesting that way of looking at things is to an audience (Peshkin, 2000). The educational researcher creates, through his or her textual work, concrete experiences that embody cultural understandings that operate in the "real" world (Denzin, 1995).

Cultural translation never fully assimilates difference. In any attempt to interpret or explain another cultural subject, a surplus of difference always remains (Marcus, 1998). "If troublesome social conditions indeed amount to conflict—where advantage to one side perforce means disadvantage to another—how can any insight, from social science or any other source, be said to benefit any sort of *general interest*" (Rule, 1997: p. 239)?

Our culture may be what enables each of us but, paradoxically, it is also crippling (Crotty, 1998). Thus, "in interpreting the interwoven world of fact and value, the social scientist also bears—crucially so—the burden of determining what ought to be (Greenfield, 1993: p. 79). We must strive to illuminate an understanding of differences and imagine how they might be otherwise.

PART I

THE COURTS AND SEPARATE SCHOOLS IN ALBERTA:

A Review of the Nature and Relevance of Canadian Court Decisions to the Governance and Finance of Separate Schools in Alberta

CHAPTER ONE

THE ABILITY TO CHOOSE *and* DEFINING THE TERMS PROTESTANT AND ROMAN CATHOLIC

Introduction

On September 1, 1905, the Provinces of Alberta and Saskatchewan were established from the North-West Territories. The *Alberta Act* (1905) and the *Saskatchewan Act* (1905) each provided for the protection of minority religious education rights as anticipated in the *Constitution Act* (1867), formerly known as the *British North America Act* (1867). This resulted in publicly funded separate schools in those provinces for Protestants or Roman Catholics, whichever is in the minority. Over the subsequent century, the functioning of the publicly funded separate schools and their public school counterparts were further defined by both the Provincial Legislatures and the Courts.

Canada's law is derived from two systems, English Common Law and Roman Civil Law. Roman Civil Law is the basis of law for continental Europe and, in particular, the French Civil Code, which is the source of the Civil Law in Quebec. The system of law in the other provinces of Canada is based on English Common Law (Jennings, 1963).

English Common Law has its origins in rules, principles and customs long established in England. Once a custom was recognized as a basis for a decision by the court, it became law, resulting in a Common Law not made by any legislator. English Common Law is also a rule of precedent. Once a judicial decision has been made, it serves as a guide or precedent for other courts making decisions on similar cases and will stand until changed by a higher court. The accumulation of court decisions is known as Case Law. "It is a most important source of reference for the interpretation of our statute law and common law rules" (Jennings, 1963: p. 4).

It is important to examine the significant court decisions in Canada, which interpreted provincial statutes relevant to the governance and finance of publicly funded separate schools and are relevant to our understanding of the functioning of separate schools in Alberta. It is this body of Case Law that collectively provides the interpretation to our Statute Law. In essence, there are two essential sources for the relevant "rules of the game:" the applicable Statute Law provided by the legislatures and the Case Law contributed by the judiciary.

Court decisions at the provincial level in Saskatchewan relevant to separate schools are applicable to Alberta, and vice versa, since both provinces share the same constitutionally protected referent legislation originating in the North-West Territories. Provincial court decisions in other provinces are not directly applicable to Alberta, but are still a useful indicative reference. Supreme Court of Canada decisions are applicable to all provinces under equivalent circumstances, until changed by that Court.

This chapter and the four that follow will consider cases leading up to the major changes in the governance and finance of separate schools in Alberta, and elsewhere in Canada, initiated in the 1990's. Five additional cases subsequent to those changes and providing further guidance from the courts will be addressed in Chapter Ten.

Federal Statutory Precedent

The foundation for separate schools in Canada and Alberta is provided by the provisions of the *Constitution Act* (1867):

> 93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:-
>
> (1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:
>
> (2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:
>
> (3) Where in any province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:
>
> (4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far

> only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.

This defining section of our Constitution protected existing separate schools in Upper Canada and Quebec and separate school rights existing in provinces at the time of union. It also protects separate school rights established by a provincial legislature some time after the union and provides an appeal mechanism to the Governor General in Council and the Parliament of Canada for remedial decision or law.

The *North-West Territories Act* (1875) provided for the establishment of both public and separate schools. The relevant section 11 is abridged as follows:

> …it shall therein always be provided, that a majority of the rate payers of any district or portion of the North-West Territories…may establish such schools therein as they may think fit, and make the necessary assessment and collection of rates therefore; and further, that the minority of the rate payers therein, whether Protestant or Roman Catholic, may establish separate schools therein, and that…the rate payers establishing such Protestant or Roman Catholic Separate Schools shall be liable only to assessments of such rates as they may impose upon themselves in respect thereof.

These initial provisions for separate schools were expanded to the following from the *School Ordinance*, North-West Territories (1901):

> 41. The minority of the ratepayers in any district whether Protestant or Roman Catholic may establish a separate school therein; and in such case the ratepayers establishing such Protestant or Roman Catholic separate school shall be liable only to assessments of such rates as they impose upon themselves in respect thereof.
>
> 42. The petition for the erection of a separate school district shall be signed by three resident ratepayers of the religious faith indicated in the name of the proposed district; and shall be in the form prescribed by the commissioner.
>
> 43. The persons qualified to vote for or against the erection of a separate school district shall be the ratepayers in the district of the same religious faith Protestant or Roman Catholic as the petitioners.
>
> 44. The notice calling a meeting of the ratepayers for the purpose of taking their votes on the petition for the erection of a separate school district shall be in the form prescribed by the commissioner and the proceedings subsequent to the posting of such notice shall be the same as prescribed in the formation of public school districts.

> 45. After the establishment of a separate school district under the provisions of this Ordinance such separate school district and the board thereof shall possess and exercise all rights, powers, privileges and be subject to the same liabilities and method of government as is herein provided in respect of public school districts.
>
> (2) Any person who is legally assessed or assessable for public school shall not be liable to assessment for any separate school established therein.

A sister ordinance to the *School Ordinance* (1901) was the *Assessment and Taxation in School Districts Ordinance* (1901) that provided a system of assessment and taxation for both public and separate school districts. The provisions from these two ordinances, Chapters 29 and 30 respectively, form the referent legislation protected by the *Constitution Act* (1867) at the time Alberta and Saskatchewan joined confederation.

Both the *Alberta Act* (1905) and the *Saskatchewan Act* (1905) incorporated the following constitutional provision:

> 17. Section 93 of *The British North America Act, 1867*, shall apply to the said Province, with the substitution for paragraph (1) of the said section 93 of the following paragraph:
>
> (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to the separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the North-West Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said Ordinances.
>
> (2) In the appropriation by the Legislature or distribution by the Government of the Province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29, or any Act passed in amendment thereof or in substitution thereof, there shall be no discrimination against schools of any class described in the said chapter 29.
>
> (3) Where the expression "by law" is employed in paragraph (3) of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30; and where the expression "at the union" is employed, in the said paragraph (3), it shall be held to mean the date at which this Act comes into force.

The *Alberta Act* and the *Saskatchewan Act*, including their sections 17, are part of the Constitution of Canada by virtue of section 52(2) of the *Constitution Act* (1982), which provides that the Constitution of Canada includes the Acts and orders referred to in the Schedule. The *Alberta Act* and *Saskatchewan Act* are listed in the Schedule.

Provincial legislatures with protected separate school rights would expand and supplement their respective relevant referent legislation. Canada's courts would in turn interpret both the referent federal statutes and the supplemental provincial legislation. These judicial decisions contribute a critical component to our comprehension of separate schools.

In this chapter and subsequent chapters, judicial decisions to be reviewed are fully referenced in the heading at the beginning of the discussion of each case. Within the discussion of each case, all quotations are from the referenced judicial decision unless otherwise noted. Case quotations are referenced by paragraph (par.) number.

The Ability to Choose

This first group of cases struggle with the inherent desire of individuals to be able to choose whether to support the public schools or the separate schools. The challenge comes when that choice is not available.

> Prior to 1917, the interpretation of the *School Act* and section 17(1) of the *Alberta Act, 1905* by the Alberta government was that there was "perfect freedom of choice" of minority faith taxpayers to direct their taxes to the public rather than separate board, reflecting the Ontario situation. The Saskatchewan government's interpretation of essentially identical provisions was the opposite of Alberta's and had been for 20 years (Maybank, 1998: p. 344).

The Bartz Case (1917): *McCarthy v. City of Regina and the Regina Board of P.S. Trustees, [1917] 32 D.L.R. 741, Saskatchewan Supreme Court.*

The Regina Public School District No. 4 was situated within the limits of the City of Regina, Saskatchewan. The Gratton Separate School District No. 13 had been established therein by the Roman Catholic ratepayers. In 1915, one Mr. A. Bartz was entered at his own request on the assessment role as a public school supporter. Mr. Bartz also openly admitted that he was Roman Catholic but contended that "since he had neither signed the petition nor voted in favor of the erection of the separate school district he should not have to support the separate school"(Fenske 1968: p. 115).

Section 394 of the *City Act* of Saskatchewan (1915) gave a right to appeal to the Court of Revision to any ratepayer "who thinks that any person who should be assessed as a public school supporter has been assessed as a separate school supporter or vice versa." Mr. J. A. McCarthy, being such a ratepayer and a separate school supporter, appealed to the Court of Revision on the ground that Bartz, being a Roman Catholic, should be assessed as a separate school supporter. The Court of Revision did not allow the appeal and McCarthy then appealed to the Local Government Board under section 412 of the *City Act*. The Local Government Board allowed the appeal and held that Bartz, being a Roman Catholic, must be assessed as a separate school supporter. The Regina Public School District appealed the decision of the Local Government Board to the Saskatchewan Supreme Court.

The six members of the Saskatchewan Supreme Court unanimously dismissed the appeal and upheld the decision of the Local Government Board. However, three of the justices wrote separate opinions. Chief Justice Sir Frederick Haultain wrote the majority opinion noting that the first question to be considered was whether the provisions in legislation leave it optional for a ratepayer of the same religious faith as the minority of ratepayers establishing a separate school to support the school or not. Section 39 of the *School Act* (1915) is a word-for-word restatement of section 41 of the *School Ordinance*, North-West Territories (1901):

> 39. The minority of the ratepayers in any district, whether Protestant or Roman Catholic may establish a separate school therein; and in such case the ratepayers establishing such Protestant or Roman Catholic separate school shall be liable only to assessments of such rates as they impose upon themselves in respect, thereof.

The appellant argued that section 39 of the *School Act* of Saskatchewan (1915) did not give the majority of the minority in any district the power to compel all of the minority to support a separate school. The foundation of the right to separate from the public district is conscientious objection or religious scruple, and the individual conscience must be the final arbiter. The words "the ratepayers establishing such Protestant or Roman Catholic separate school" contained in section 39 "mean the ratepayers voting for the erection of the separate school district…and do not include the ratepayers voting against it." After examining all the relevant legislation, Chief Justice Haultain concluded:

> The various provisions of the City Act, the School Act and the School Assessment Act…relating to assessment and taxation for school purposes, all, in my opinion, point conclusively to an intention of the legislature to establish majority rule

> within a minority, either Protestant or Roman Catholic, establishing a separate school…all seem to me to impose an unqualified liability to taxation for separate school purposes upon every ratepayer in the municipality who is of the same religious faith as the ratepayers who established such separate school (par. 10).

In the event that the above noted initial argument failed, the appellant in the alternative argued that section 17 of the *Saskatchewan Act* (1905), which is identical to section 17 of the *Alberta Act* (1905):

> …in so far as it purports to give to the legislature of the Province of Saskatchewan jurisdiction to enact legislation depriving any ratepayer whose lands are situate within a public school district within which a separate school has been established of the right to support with his taxes such public school regardless of what his religious faith may be, or, in so far as it purports to place it beyond the competence of the Saskatchewan Legislature to enact laws requiring all ratepayers to be taxed for the support of the public school, is beyond the competence of the Parliament of the Dominion of Canada…(par. 14).

The Chief Justice did not agree. Referencing section 93 of the *Constitution Act* (1867), the Chief Justice concluded that what has been deliberately given cannot be taken away. If it is taken away, the remedial action of the Governor General in Council and the Parliament of Canada may be invoked by a Protestant or Roman Catholic minority whose rights or privileges under the provincial statutes have been affected.

Justice Newlands elaborated on the issue of choice. Only those ratepayers of the same religious faith as the petitioners are entitled to vote for or against the establishment of a separate school district. The formation of a separate school district is dependent upon the result of that vote. The formation of a separate district is not therefore, a right that the individual ratepayers of the minority faith have, but is a question that these ratepayers as a class must decide by their votes. Only the religious minority as a class can form a separate district. There being no individual right to form a separate district, it cannot be said that the individuals voting for the formation are the ones who established it. The minority voting are bound by the vote of those in the majority if they decide not to form such a district, and they are equally bound where the majority vote is in favour. Otherwise, there would be no purpose in taking a vote.

Justice Lamont noted that the appellant admitted that the "minority of the ratepayers" referenced at the beginning of section 39 of the *School Act* (1915), who have the right to establish a separate school, meant all of the ratepayers of the religious faith of the minority as a class. Justice Lamont concluded the ratepayers referred to in the latter part of the section, who are to be liable only to the rates which they impose upon themselves, are, by the express wording of the clause, the ratepayers establishing such Protestant or Roman Catholic separate school. "It is a rule of construction that a word in an Act of Parliament should be given the same meaning throughout, unless some clear reason appears for giving it a different meaning" (par. 59).

The Neida Case (1917): *McCarthy v. City of Regina and Regina Board of P.S. Trustees, [1917] 32 D.L.R. 755, Saskatchewan Supreme Court.*

This is the sister case to the *Bartz Case* (1917) originating from the same City of Regina. In this instance, Mr. Nick Neida was not a Roman Catholic but desirous of being assessed as a separate school supporter. Ratepayer J. A. McCarthy once again did his civic duty taking the question forward to the Local Government Board. That Board held that a ratepayer not of the religious faith of the minority which established a separate school must be rated as a public school supported. This time it was McCarthy who appealed the Board's decision to the Saskatchewan Supreme Court.

This Mr. J. A. McCarthy is one interesting character. In the *Bartz Case*, he supported successfully the position that a Roman Catholic ratepayer could not choose to support the public district. In the *Neida Case*, he appealed the position that a non-Roman Catholic could not choose to support the separate district. It appears that Mr. McCarthy may have been an opportunistic separate school supporter who argued for ratepayer choice only when it was favourable to more taxes going to the separate district.

The Saskatchewan Supreme Court unanimously dismissed the appeal. Justice Lamont wrote the short decision with Chief Justice Haultain choosing to add his own even shorter version. Justice Lamont stated that the right to establish a separate school is given to the ratepayers of the minority faith, whether Protestant or Roman Catholic. But for this privilege, all ratepayers would be under obligation to support the public school. Accordingly, only those to whom the right of separation is given can escape the general obligation to support the public school. Chief Justice Haultain noted that Neida is not a member of the minority who established the separate school and is consequently not entitled to immunity from taxation for general school purposes. Score that one win and one loss for McCarthy.

Bartz Revisited (1918): *City of Regina v. McCarthy, [1918] 43 D.L.R. 112, Judicial Committee of the Privy Council.*

The saga of Mr. McCarthy had one more chapter. The City of Regina appealed the Bartz decision of the Saskatchewan Supreme Court directly to the Judicial Committee of the Privy Council in London, England. The point as to whether the legislation in question was *ultra vires* was not pressed. What was appealed was the decision directing that Bartz, a Roman Catholic residing in the Gratton Roman Catholic Separate School District, be entered as a separate school supporter.

Lord Dunedin noted in the Privy Council's decision that the various opinions of the Local Government Board and the Saskatchewan Supreme Court "express with so much precision and accuracy the views which are entertained by their Lordships that they can really add nothing to what has been already said" (par. 3). After a vote, the majority binds the minority, either in establishing or refusing to establish a separate school district. "It is impossible…to read the words in section 39 of the *School Act* (1915), 'ratepayers establishing a separate school,' as applicable only to the majority of the minority" (par. 6).

The Shannon Case (1930): *Ecoles Dissidents de St. Romuald v. Shannon, [1930] S.C.R. 599, Supreme Court of Canada.*

The great majority of the people in the municipality of St. Romuald in the Province of Quebec were Roman Catholic and therefore the public school commission in St. Romuald was a Roman Catholic body. There was a dissentient school corporation operating a small school for the Protestant children of St. Romuald. Mr. Whitefield Shannon was a resident of St. Romuald, professed to be of the Protestant faith and was married to a Roman Catholic. The couple was raising their children in the Roman Catholic faith but in 1927 wished to enroll them in the dissentient Protestant school.

The dissentient board refused to accept the children, since they were known to be Roman Catholics. The board further advised Shannon that, as his children professed a religion different from his own, they were not entitled to consider him a dissentient or to collect taxes from him. The board had Shannon struck from the dissentient roll and directed him to pay his taxes to the public school commission. In 1928, Shannon sought successfully a writ from the Quebec Superior Court to force the dissentient board to accept his children. The dissentient board took that decision to the appeal side of the Court of King's Bench, and in turn to the Supreme Court of Canada.

The decision of the Supreme Court as written by Justice Duff supported the decisions of the lower courts. Reference was made to section 99 and 103 of the *Education Act* of Quebec (1925). "In any school municipality, any number of property owners, occupants, tenants or ratepayers" (section 99) not of the faith of the majority may give written notice to the public school commission of their intention to withdraw to form a separate school corporation and elect trustees. As soon as the number of residents providing the written notice of withdrawal, either initially or after the formation of the separate corporation,

> shall amount to two-thirds of the ratepayers of the municipality professing a religion different from that of the majority of the inhabitants thereof, then all the ratepayers of the municipality of the religious denomination of such dissentients, who have not given such notice, and who did not send their children to a school under the control of the school commissioners, shall also be deemed dissentients (section 103).

The dissentients themselves must be of a common religious faith, but the statute does not appear to contemplate the religious faith of the children of any dissentient. The statute appears to assume the authority or faith of the parents, in respect to the education of their children, during the statutory school years. Justice Duff dismissed the appeal. Make that strike three for the Protestant dissentient board.

The Bintner Case (1965): *Bintner v. The Board of Trustees for the Regina Public School District, [1965] S.J. No. 106, [1965] S.J. 129, Saskatchewan Court of Queen's Bench.*

Once again we visit the City of Regina. The family of Bernard J. Bintner came to Regina in 1951 and from then until 1958 Mr. Bintner was shown as a separate school supporter. In 1958, the family moved within the city and upon filing a notice of change with the City Assessor, Mr. Bintner became a public school supporter. All went well until May 1965 when Mrs. Bintner made a written application to enroll daughter Ingrid Jean, age five, in public school beginning that September. In the application, the mother stated that the religious denomination of the child and of both parents was Roman Catholic. The principal of the school wrote back declining to accept Ingrid because she was Roman Catholic.

Ingrid Jean Bintner, by her father, filed a Statement of Claim with the Court of Queen's Bench pleading the Saskatchewan Bill of Rights Act (1953):

> 13.-(1) Every person and every class of persons shall enjoy the right to education in any school, college, university or other institution or place of learning, vocational training or apprenticeship without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.
>
> (2) Nothing in subsection (1) shall prevent a school, college, university or other institution or place of learning which enrolls persons of a particular creed or religion exclusively, or which is conducted by a religious order or society, from continuing its policy with respect to such enrollment.

Section 16 provides for an injunction restraining those who would deprive a person from entitlement under the Bill of Rights, and that is precisely what Ingrid requested, until the delivery of judgment at trial.

Justice MacPherson, in ruling on the interim injunction, stated the key questions:

> Has a Roman Catholic a right to attend a Public School when a person not of that faith has no right to attend a Separate School? To what extent is the decision…affected by the fact that the father of the plaintiff has for many years chosen to be a Public School supporter and pays his taxes to the defendant Board? Is the right that of the child to attend school or that of the parent to send the child to it (par. 11)?

Justice MacPherson noted the rule of law that an interim injunction is not granted unless the plaintiff shows a strong *prima facie* case that he will succeed, but doubted that the plaintiff would succeed. He also noted that there would be no irreparable harm resulting to the "tiny plaintiff" if she did not enter school until after judgment at trial. Justice MacPherson foresaw more harm to Ingrid if she was ordered out of school in mid-term in the event an injunction granted by him was not continued at trial, and dismissed the application.

In his trial decision, Chief Justice Bence accepted the contention of the defendant public school board. "The child" is excluded from the public school system, not because she is Roman Catholic, but because those of her faith withdrew in accordance with the *School Act* to form their own school system. She is not a member of that part of the community that has a right to attend the public schools. Her right is to attend the separate schools in Regina.

Clearly, the fact that Bintner had been paying his taxes to the public system for a number of years did not influence Chief Justice Bence. The Chief Justice consistently focused on the faith of the child, even though the Supreme Court in *Shannon* had determined that the faith of the parent was the determinant. Since Mr. and Mrs. Bintner were both of the Roman Catholic faith, the outcome of *Bintner* would have been no different had the Chief Justice placed the focus on the faith of the parent. In the subsequent *Schmidt Case*, the focus was clearly on the faith of the parent.

The Schmidt Case (1976): *Schmidt v. Calgary Board of Education et al., [1976] 72 D.L.R. (3d) 330, reversing [1975] 57 D.L.R. (3d) 746, Alberta Supreme Court, Appellate Division.*

Adolf Schmidt, his wife and two children moved from Toronto to Calgary in the summer of 1974. Schmidt and his wife were both Roman Catholic but supported the public school system in Ontario and sent their children to the public school. When Schmidt approached the Calgary Board of Education to enroll his children in public school, he was advised that he must pay non-resident fees for each of his children or, alternatively, sign a paper to the effect that he was not a Roman Catholic before his children could be accepted in the public school system.

Schmidt filed a complaint with the Alberta Human Rights Commission alleging contravention of the *Individual Rights Protection Act*. He stated that "because I am a Roman Catholic, I have been told to pay…tuition fees for my two children, or denounce my faith, in order for the children to attend public school" (par. 4). The matter went to a Board of Inquiry, which held that the complaint had not been established. Schmidt was granted a hearing at Trial Division where Justice Shannon ruled that so long as the complainant Schmidt paid his taxes to the public school board he could not be charged tuition for his children as non-residents.

The Calgary Board of Education appealed to the Alberta Supreme Court, Appellate Division. Justice Moir delivered the court's unanimous decision that Schmidt's complaint was not justified. The appeal was allowed. Section 53 of the *School Act* (1970) was referenced:

> 53. After the establishment of a separate school district, a person residing within the boundaries of the separate school district who is of the faith of those who established that district, whether Protestant or Roman Catholic, is a resident of the separate school district and a separate school supporter and is not a resident of the public school district or a public school supporter.

Justice Moir stated that the scheme of public and separate schools as it existed under the *School Ordinance* (1901) and as protected by section 17 of the *Alberta Act* (1905) is the separate and public school system we have today. "The majority of the minority have the right to compel the entire minority to join the separate school division" (par. 14). Reference was also made to section 143 (2) of the *School Act* (1970):

> A board may charge tuition fees for any pupil whose parent is not a resident of the district or division but the fee shall not exceed the amount of the net average local cost per pupil of maintaining the program in which the pupil is enrolled.

Justice Moir found that "the payment of taxes do not effect a change in residence of the taxpayer...The fact that Schmidt is paying his taxes to the public school board must be by error in law...it cannot effect Schmidt's residence" (par. 10).

Under section 1(2) of the *Individual Rights Protection Act* (1972), that *Act* applies to "any law in force in Alberta at the commencement of this Act that is subject to be repealed, abolished or altered by the Legislature of Alberta." Justice Moir found that the *Individual Rights Protection Act* has no application to this issue as there is no legislative authority in Alberta to abolish a scheme of public and separate schools approved by the Imperial Parliament and the Parliament of Canada.

Mr. Schmidt's expectation that he could choose to be a public school supporter in Alberta is understandable. He had been a public school supporter in Ontario. But Ontario's constitutionally protected system of separate schools is different than the one in Alberta and Saskatchewan. In Ontario, members of the minority faith have the choice to remain with the public system. Under the system based on the *School Ordinance* of the North-West Territories (1901), no such choice is available.

Defining the terms Protestant and Roman Catholic

Where a separate district has been established in Alberta by either the Protestant or Roman Catholic minority, issues of residency, property tax payment, and the parent's right to access schooling for their child is determined by whether the individual is of the religion of those establishing the separate district. The next group of cases attempts to define for the purposes of public and separate schooling just what is meant by the terms Protestant and Roman Catholic. How are we to determine who is of the Protestant faith and who is of the Roman Catholic faith?

The Roschko Case (1922): *Pander v. the Town of Melville [1922], Saskatchewan Local Government Board.*

William Roschko was a resident of the Town of Melville, Saskatchewan, and assessed as a public school supporter. Mr. Roschko was also a member and trustee of the Ruthenian Greek Catholic Church. One Mr. Pander lost his bid at the town's Court of Revision to have Mr. Roschko assessed as a supporter of the St. Henry's Roman Catholic Separate School District No. 5 and subsequently appealed to the Local Government Board. This seems like déjà vu—shades of Mr. McCarthy of Regina.

In the Local Government Board decision, Chairman Bell referenced the Privy Council's decision in *the Bartz Case* (1918) stating that the minority that may form a separate school district are the members of only two distinct classes of religion, Protestant or Roman Catholic. The minority ratepayers establishing such a district are only liable for their self-imposed rate and not for public school rates. Chairman Bell also noted that, since Roschko was now assessed as a public school supporter, the onus was on the appellant, Pander, to prove that Roschko was a member of the class of ratepayers of the Roman Catholic religious faith and should accordingly be assessed as a separate school supporter. Mr. Pander did precisely that, submitting evidence that the Ruthenian Greek Catholic Church, commonly know as the Uniate, is a branch of the Roman Catholic Church.

Initial reference was made to *An Act to incorporate the Ruthenian Greek Catholic Episcopal Corporation of Canada* (Statutes of Canada, 1913). The preamble of this *Act* states that Ruthenian Greek Catholics, "while in communion with Rome and the Roman See, follow an oriental rite and liturgy proper to themselves." Section 1 of the *Act* referred to "Ruthenian Greek Catholics of Canada of the same faith and rite and persevering in communion with the Roman Pontiff." References were also made to various provincial statutes in Saskatchewan, Alberta, and Manitoba that described the Greek Catholic Ruthenian Church "in communion with Rome" and the Bishop of the Diocese of Canada of the Ruthenian Greek Catholic Church being "appointed by the Holy Pontiff and persevering in communion with Rome." In granting the appeal, Chairman Bell concluded:

> According to the above references it would appear that the Ruthenian Greek Catholic Church, as distinguished from the Greek Orthodox Church, which is admittedly not a branch of the Roman Catholic Church, is in communion with Rome and has its bishop and his successors in office appointed by the Pope of Rome, and that William Roschko is a member of such church, and therefore comes within that class of ratepayers of the Roman Catholic religious faith and should be assessed as a separate school supporter (par. 27).

The Roschko Case "determined that the term 'Roman Catholic' included all those adherents to a faith that recognizes the authority of the Pope" (Smith and Foster, 2001, March: p. 410).

The Ulmer Case (1923): *Rex ex Rel Brooks v. Ulmer, [1923] 1 D.L.R. 304, Alberta Supreme Court, Appellate Division.*

Mr. Jacob Ulmer resided within the boundaries of Stony Plain Consolidated School District No. 52, which was a public school district in the Province of Alberta. There was no separate school district. Since May 1922, Mr. Ulmer's thirteen-year-old son, Walter, had not attended the public school but had regularly attended a school in the same district known as St. Matthew's Parochial School. This school had been organized and established in 1894 as a German Lutheran Protestant (or Evangelical) Denominational school. It was supported and maintained by members of St. Matthew's Church, a congregation of adherents of the German Lutheran Protestant (or Evangelical) Church, which included Mr. Ulmer.

In 1917, St. Mathew's School was temporarily and voluntarily closed, at the request of the provincial government, by the authorities of the school, "on account of the then existing war" (par. 9). The school reopened in August 1921 and had since operated continuously, except for holiday periods, being supported as in all previous years by the voluntary contributions of the members of the congregation. All supporters of this school had always paid the usual public school taxes. This voluntary school "apparently…had never in fact been interfered with by the authorities" (par. 60).

Section 3 of the *School Attendance Act* (1910) provided that:

> Every child who has attained the age of 7 years and who has not yet attained the full age of 15 years shall attend school for the full term during which the school of the district in which he resides is open each year…

Section 5 provided that a parent or guardian or other person shall not be liable to any penalty imposed by the *Act* in respect of a child if:

> (a) In the opinion of a school inspector as certified in writing, bearing date within one year prior to the date of any complaint laid under this Act, the child is under efficient instruction at home or elsewhere.

Mr. Ulmer had been charged and convicted in the lower court of an offense under the *School Attendance Act* (1910) because son Walter was not attending public school. The proper provincial school inspector had refused to provide a certificate under section 5(a) but had also refused to announce any reasons for withholding the certificate except that "the work done in the school was unsatisfactory or inefficient" (par. 9). "The defendant," Mr. Ulmer, had "contended that he was one of a 'class of persons' which had 'a right or privilege with respect to denominational schools' at the union" (par. 59) of Alberta within confederation in 1905. The magistrate referred the matter to the appellate court for opinion.

Justice Stuart upheld Mr. Ulmer's conviction. The required certificate under section 5 of the *School Attendance Act* (1910):

> did not in fact exist and had not in fact ever existed because it had never been given. The magistrate could not, in my opinion, go behind these facts and enquire into the action of the school inspector in refusing the certificate. He could not do otherwise on the admitted facts than convict the accused (par. 68).

Justice Stuart devoted most of the text of his decision to a lengthy discussion of what he called "a constitutional question of some gravity and magnitude" (par. 11). At issue was whether the term "at the union" in section 93 of the *Constitution Act* (1867) should properly refer to the time when the North-West Territories was admitted to Canada in 1870 or to when Saskatchewan and Alberta became provinces in 1905. Had it been appropriate, constitutionally, for section 17 of the Alberta Act to stipulate the answer to that question? Justice Stuart concluded, "while it is not competent to the legislature of Alberta to amend sec. 17 of the Alberta Act it was quite competent to the federal legislature to enact it" (par. 55).

Justice Stuart further stated that:

> It seems to me to require little argument to conclude that these people were…not of a "class of persons" who possessed "any right or privilege with respect to denominational schools" in 1905. In my opinion those words refer to a legal right or privilege…established by law and granted specially to a distinctly specified "class of persons" who have been set apart from the rest of the community by the law which has conferred the right or privilege upon them (par. 61).

Even though German Lutherans were not the same as the much broader class of persons, Protestant, which did possess denominational school rights, Justice Stuart noted that Protestants in the public district had never made any effort to form a separate school. "Indeed they do not appear to be a minority at all but rather a majority if one may take what was stated to us on the argument as correct" (par. 57).

Justice Stuart appeared to be voicing some disapproval of a legislative change with a dash of flippancy when he added:

> True, there has been a change by withdrawing the decision as to the existence of other satisfactory instruction from the competency of the magistrate and placing it in the hands of a school inspector. But that change was made for everybody in the district without distinction. So also everybody in the district was quite as free as were the congregation in question to set up a voluntary school of their own. Jews could have done as much, or all people born in Scotland or all people with red hair. But all these would still have been liable to prosecution for non-attendance at the public school (par. 61).

Justice Beck concurred but in his supplemental opinion made the flippancy of Justice Stuart seem mild. Justice Beck appeared to have issues of his own.

> Legislation of this sort prevailed in the German Empire…drastic measures were used to prohibit the use of any language but German in the schools…The body of

> people whom the defendant represents appear to have thought that in coming to this country they were coming to a land where quite different ideas of the moral power of the State and the liberty of the individual prevailed. They are unfortunately mistaken. They desire to have their religion pervade the secular instruction of their children. They desire that the happiness of their home life may be maintained by their children being enabled to converse with their parents in their mother tongue, while at the same time being enabled to enter fully into the social and business life of the community by being enabled to converse in the English language (par. 81).
>
> This is not to be allowed them. They must send their children to a public school where in practice no religion is taught, and where even when it is taught it is merely as a subject of instruction. By this method of extinguishing those sentiments which furnish the basis of a happy family life, they are expected to be converted into happy, contented and loyal Canadian citizens. They have exchanged one Caesarism for another…There is no protection for the body of people to which the defendant belongs unless the Legislature sees fit to expunge this tyrannous provision from the School Law, or at least unless the Department adopt a less tyrannical policy of administration of the law (par. 82).

In 1922, we see in the *Ulmer Case* an unusual judicial voicing of the passionate fervour with which religious minorities view their particular values-based education for their children, a strong sampling of the coming issue around the Canadian reality that minority religious education rights are available to some religious groups and not others, and an example of the dynamic tension that prevails between the legislative and judicial arms of our system of government.

The Hirsch Case (1926): *Reference re: Educational System in Island of Montreal, [1926] S.C.R. 246, Supreme Court of Canada, affirmed with minor variations [1928] 1 D.L.R. 1041, Privy Council.*

The Province of Quebec provided public education in three types of schools: common, dissentient, and confessional schools. Common schools were religiously neutral, open to all, and operated throughout the province outside of the Island of Montreal and Quebec City. Dissentient schools were denominational, reserved for Protestant or Roman Catholic minorities, and also operated outside of Montreal and Quebec City. Confessional schools operated inside the Island of Montreal and Quebec City, were denominational (Roman Catholic or Protestant), but open to all students (Smith and Foster, 2001, March). Confessional schools were governed by either a

Roman Catholic or Protestant Board of School Commissioners. This was the system created by the *Consolidated Statutes of Lower Canada* (1861) and protected by section 93 of the *Constitution Act* (1867).

Children who were neither Roman Catholic nor Protestant could attend either the Roman Catholic or Protestant confessional school inside Montreal or Quebec City. However, as one century faded into another, the Protestant Board of School Commissioners of Montreal refused to recognize the right claimed by persons professing the Jewish religion to have their children received and educated in Protestant confessional schools, to which Jewish parents had previously sent their children almost exclusively. In response, the Quebec Legislature passed an *Act to amend the law concerning education with respect to persons professing the Jewish religion* (1903). Section 1 provided that:

> …in all the municipalities of the province…persons professing the Jewish religion shall, for school purposes, be treated in the same manner as Protestants, and for the said purposes shall be subject to the same obligations and shall enjoy the same rights and privileges as the latter.

Sections 2, 3, 4 and 5 provided that school revenues and taxation payable by persons professing the Jewish religion shall go to the support of the Protestant schools, where they exist. Section 6 stated:

> …children of persons professing the Jewish faith shall have the same right to be educated in the public schools of the province as Protestant children and shall be treated in the same manner as Protestants for all school purpose.

However, the legislation did not have the desired effect on the position of Montreal's Protestant School Commissioners. By Order in Council on February 3, 1925, a series of questions related to the educational system in the Island of Montreal was referred to the Court of King's Bench, Appeal Side, for hearing and consideration. The Quebec Legislature did not like the answers they got on March 11, 1925. The *Education Appeals Act* (1925) was assented to on April 3, 1925. It declared, consistent with the enabling provision of section 42a of the *Supreme Court Act* (1922), that the opinion of the Court of King's Bench, Appeal Side, on these questions "shall be deemed to be a final judgment delivered by the highest court of final resort of the province of Quebec" (par. 2). This enactment enabled an appeal to lie directly to the Supreme Court of Canada.

Mr. Michael Hirsch was the "named" one of two appellants, both of whom had served as Jewish members of a special commission of education appointed by the Provincial Government. The respondents were both the Protestant and Roman Catholic Boards of Commissioners of the City of Montreal, the third Jewish member of the special commission, and, of course, the Attorney General of Quebec.

Chief Justice Anglin noted that "prior to 1867 the non-Catholic non-Protestant elements of the population of Lower Canada were numerically negligible and were so treated in legislation respecting education matters" (par. 14). In 1925, the Court of King's Bench had unanimously held the 1903 statute to be *ultra vires*. The Chief Justice noted that Jewish children in common with all other children in the City of Montreal had, under the *Consolidated Statutes of Lower Canada* (1861), the right to attend any school under the control of the Commissioners, whether Catholic or Protestant.

> No increased burden is imposed on the Protestant schools…they were already bound in 1867 to receive Jewish pupils…On the contrary, the Protestant schools derive a distinct financial benefit from the provision (par. 24).

Therefore, sections 2 through 6 of the 1903 statute did not transcend the legislative power conferred on the provincial legislature by section 93 of the *Constitution Act* (1867) in so far as they apply to the Cities of Montreal and Quebec.

> But as to the Protestant dissentient schools in the rural municipalities, section 6 disregards and derogates from a privilege conferred on them…by provision 2 of s. 93 of the B.N.A. Act and is, in its application to those schools, ultra vires (par.22).

The Supreme Court had determined that dissentient school boards (in this case, those Protestant denominational school boards outside of Montreal and Quebec City) had the authority to refuse to accept Jewish students in their schools and that provincial legislation requiring acceptance was *ultra vires*. The Chief Justice concluded with a "broad statement" which has been "relied upon and quoted in many later cases, to restrict provincial powers over denominational schools" (Maybank, 1998: p. 332):

> From what has been said it is apparent that we would regard legislation designed to impair the right of Protestants, as a class of persons in the province of Quebec, to the exclusive control, financial and pedagogic, of their schools, as ultra vires of the provincial legislature (par. 38).

The meaning of the terms Roman Catholic and Protestant caused no concern for the Chief Justice. He concluded that the term Protestant

> …is not synonymous with the non-Catholic, in that it excludes all persons who do not profess to be Christians; and of these it includes only such as accept what are generally regarded as the principles and doctrines of the Reformation of the 16th century (par.12).

The Chief Justice also accepted the "general language" definition of Protestant as being "applied to any Western Christian or member of a Christian Church without the Roman communion" (par. 12).

Finally, the decision of the Judicial Committee of the Privy Council supported the decision of the Supreme Court of Canada. Jewish children were entitled to attend Protestant or Catholic confessional schools inside the Cities of Montreal and Quebec but not dissentient schools outside of those cities. On the scope of section 93 of the *Constitution Act* (1867) with respect to religious denominations, Viscount Cave stated:

> The contention…that the word "Protestant" in the statutes must be construed as meaning 'non-Catholic' and so as including Jews is untenable; and also that the Protestant community, although divided for some purposes into denominations, is itself a denomination and capable of being regarded as a "class of persons" within the meaning of s. 93 of the Act of 1867 (par. 19).

The *Hirsch Case* has assisted with the definition of the term Protestant, but this case is also important because it assisted in understanding the intent of section 93. "One could expect that defenders of denominational rights would view the section [93] expansively while supporters of state rights would view it more narrowly" (Smith and Foster, 2001, March: p. 439). The Privy Council set a theme for a more flexible perspective on the ability of the province to make laws respecting education, somewhat contrary to the more restrictive statement noted above made by Chief Justice Anglin in the Supreme Court decision. Viscount Cave stated:

> While s. 93 of the Act of 1867 protects every right or privilege with respect to denominational schools which any class of persons may have had by law at the Union, it does not purport to stereotype the educational system of the Province as then existing. On the contrary, it expressly authorizes the provincial legislature to make laws in regard to education subject only to the provisions of the section; and it is difficult to see how the legislature can effectively exercise the power so entrusted to it unless it is to have a large measure of freedom to meet new circumstances and needs as they arise (par.25).

The Perron Case (1955): *Perron v. School Trustees of the Municipality of Rouyn and Attorney General of Quebec, [1955] 1 D.L.R. (2d) 414, Quebec Court of Queen's Bench, Appeal Side.*

Mr. Perron and his wife were both raised in the Roman Catholic religion and were married in that same faith. When their children became of school age, Perron belonged to the School Commission of the Immaculate Conception, joining the Roman Catholic majority in the Town of Rouyn, Quebec. In about 1948, Perron became an adherent to the doctrine of Jehovah's Witnesses. In 1951, he asked that his children be admitted to the Protestant dissentient school. On December 3, 1951, the Protestant school commission passed a resolution refusing admittance to the Perron children as pupils who could not qualify as Protestants. On December 10, 1952, both Perron and his wife conveyed to the Bishop of the diocese a formal statement of renunciation of the Catholic faith. Perron then renewed his proceedings with the Protestant trustees, but without success.

In the fall of 1953, the Perron children were admitted to Protestant school, but several days later the Protestant trustees ceased accepting them. Perron then sought a writ of mandamus from the Superior Court to force the dissentient board to accept his children. The Superior Court decreed that:

> The Appellant does not form part of the Protestant religious denomination…the Appellant is a member of a sect known under the name of Jehovah's Witnesses whose religious belief, being distinct from and exclusive of Catholicism, Protestantism and Judaism and opposed to all religions, cannot be recognized as a Protestant religion (par. 8).

Perron then took his appeal to the Quebec Court of Queen's Bench, Appeal Side.

Justice Bissonnette stated that the sole question was whether the appellant was a Protestant. In referring to the sixteenth century Protestant Reformation, Justice Bissonnette stated that the conception of the adherents to this new religion was that, if they approved of repudiating the supremacy of the Pope, they remained attached to the Christian religion. His findings were that:

> …it is not necessary, in order to be a Protestant, that there be uniformity of belief among the numerous religious sects forming Protestantism. In conclusion, to be considered a Protestant it is sufficient to be a Christian and to repudiate the authority of the Pope (par. 16).

The Justice stated that Jehovah's Witnesses believe in Jesus Christ and in his doctrine. Their claim is that they want to reform the Catholic and Protestant religions because they are straying from the true teaching of Our Lord. He was unable to reach the same conclusion as the trail judge.

> The appellant "did not qualify as Protestant", say the respondents, but they have not established what he was to submit in order to have himself considered a Protestant. The law is what determines his rights and circumscribes the jurisdiction of the trustees. If therefore the appellant renounces the Catholic religion, but calls himself a disciple of Christ, his status for school purposes is definite and he is imposed on the respondents. Such is, it seems, the arrangement of the Education Act. Historic argument and its literal interpretation justify no other conclusion (par. 21).

Justice Bissonnette referenced Viscount Cave in *the Hirsch Case* that although the Protestant community is divided into different denominations, it is itself a denomination capable of being regarded as a class of persons within the meaning of section 93 of the *Constitution Act* (1867). Thus, the *Perron Case* gave us the important distinction "that to be considered Protestant (for the purposes of section 93) it was sufficient to be Christian and repudiate the authority of the Pope…all Protestants, thus defined are considered as one class of persons" (Smith and Foster, 2001, March: p. 410).

The Starland Case (1988): *Starland School Division No. 30 v. Alberta (Province) et al, [1988] A.J. No. 903, Alberta Court of Queen's Bench.*

There were a total of 43 electors in the Livingston School District No. 2118, a small rural public district included in Starland School Division No. 30 in the Province of Alberta. The Protestant electors in the Livingston District completed the process to establish a Protestant separate district. On July 8, 1987, Starland Division sued the Province of Alberta and the Minister of Education seeking damages of $5,000,000 "for future loss of tax revenue, grants and other funding" (par. 3). Starland sought an injunction to restrain the Minister from establishing the Protestant separate district. The requested injunction was not granted.

On April 25, 1988, Starland applied to Justice Wachowich of the Court of Queen's Bench to amend its Statement of Claim to ask for a "declaration that the Minister forthwith dissolve the Protestant separate school district established within the geographic boundaries of the Plaintiff" (par.2). Starland also sought leave to amend its Statement of Claim by adding six electors of the Livingston District as defendants, three of the surname DeKeyser and three of the surname Leonhardt. It was the case for the Plaintiff, Starland, that those six electors acted maliciously to achieve the goal of establishing the Protestant separate district by falsely declaring themselves to provincial authorities that they were of the Roman Catholic faith. The effect was that, in a survey or census of all electors in the Livingston District, a slim majority declared themselves Roman Catholic placing the Protestant electors in the minority and eligible to establish the Protestant separate district. Justice Wachowich granted the requested amendments.

On October 3, 1988, the six named defendants made application to Justice McDonald of the Court of Queen's Bench to have the Statement of Claim against them struck out. References were made to the *School Act* of Alberta (1980), including, in part, the following:

> 52(1) The minority of electors in any district, whether Protestant or Roman Catholic, may establish a separate school in that district, and in that case the electors establishing a Protestant or Roman Catholic separate school are liable only to assessments of the rates they impose on themselves in respect of that school, and any person who is legally assessed or assessable for a public school in the district is not liable to assessment for any separate school in it.
>
> (2) The petition for the establishment of a separate school district shall be signed by 3 electors of the religious faith indicated in the name of the proposed district and shall be in the form prescribed by the Minister.
>
> (3) The persons qualified to vote for or against the establishment of a separate school district are the electors in the district who are of the same religious faith, Protestant or Roman Catholic as the petitioners.
>
> (4) The notice calling a meeting of the electors for the purpose of taking their votes on the petition for the establishment of a separate school district shall be in the form prescribed by the minister…
>
> 53(1) If as a result of a vote at a meeting held under section 52 the majority of the electors voting for or against the district have voted in favour of the district the minister by order shall establish the separate school district with the same boundaries of those of the public school district…
>
> 55. After the establishment of a separate school district, a person residing within the boundaries of the separate school district who is of the faith of those who established that district, whether Protestant or Roman Catholic, is a resident of the

> separate school district and a separate school supporter and is not a resident of the public school district or a public school supporter.

Justice McDonald referenced the fact that, under section 52(3), the only persons entitled to vote for or against the establishment of this particular separate school district "were the electors of the Protestant faith, that being the faith stated by the three electors who signed the petition dated June 2, 1987" (par. 9). He noted that conceivably an issue might arise as to whether those electors who attended the meeting were or were not of "the same religious faith as the petitioners." Justice McDonald stated this was not an issue here, "but one can see without difficulty that if it were an issue, it might give rise to the same difficult and sensitive issues" (par. 9)

Justice McDonald had this to say about the process used by the Department of Education to administer the legislation:

> …the School Act appears not to provide for any method by which it may be determined who…is of the "Protestant" religious faith or of the "Roman Catholic" religious faith, or which group of electors is "the minority" (or, conversely, the majority) (par. 12).
>
> …the Department of Education, in a rational attempt to provide a working means to carry out the objects of the statue, has devised a means by which electors may declare whether they are of the one "religious faith" or the other, if they are to be qualified to vote, and the same means has been used to determine which is the "minority of electors" in the district…In the obtaining of such declarations no element of compulsion exists, and there cannot be said to be any intrusion by the state into the freedom of religion of those who are invited to make such a declaration (par. 23).

With respect to the application of the six named defendants, Justice McDonald had the following to say:

> …what the plaintiff in the present case wished the court to do is to explore the mind and conscience of the six added defendants in order to determine whether they were in fact Roman Catholic, or, conversely, whether they were Protestant, or, indeed whether they were of neither "religious faith". Such an exploration by the court, especially when it would involve questions being put to them as witnesses, and requiring them to answer under threat of the temporal sanctions that are attached to the oath, is inherently repugnant as a matter of judicial policy (par. 16).
>
> The court should not permit its judicial powers…to be applied to an issue of religious belief and conscience…Such a matter is in the realm of the non-

> justiciable, not because the court could not entertain and compel evidence about it, but because the court ought not to do so. The court could not decide judicially whether a person is "of the religious faith"…simply by having regard to objective evidence of conduct external to the human mind and conscience – such as evidence of attendance or non-attendance at a particular church. Of potentially equal or even greater relevance might be a multitude of other matters, not just of overt conduct but of concerns and ideas held by a person with greater or lesser degree of conviction or clarity…(par. 18).
>
> …if there is a cause of action, the minds and consciences, as well as the overt religious conduct, of all those persons would be open to inquiry and scrutiny by the court, an arm of the state. So the repugnant consequences of permitting this action to proceed against the six defendants would affect not only those persons but many others (par. 19).
>
> …the very process of adjudication that the "religious affiliation" of each of these six defendants was other than as they had declared it to be, would be a serious invasion by the court of the freedom of religion of these persons (par. 23).

I have excerpted Justice McDonald's findings, which he discussed over a number of pages, while maintaining the chronology, to focus on his compelling concepts. Religious faith is not determined solely by our actions but also, perhaps more so, by the concerns and ideas held in our individual mind and conscience. The court, an arm of the state, ought not to question our individual declarations of faith. To question the one, whose intent may have been to mislead, would lead inevitably to questioning the many. To do so would be both repugnant and a violation of our fundamental religious freedoms.

Justice McDonald struck out the amended Statement of Claim against the six added defendants. The case against the Province of Alberta and the Minister of Education never went to trial. Once the question of the appropriateness of the actions of the six named individual defendants was removed, the core justification for seeking to reverse the establishment of Livingston Protestant Separate District was also removed.

Key Findings

In summary, this set of judicial decisions has given us direction on the issues of choice in supporting the public or separate school system as well as in both defining the terms of Protestant and Roman Catholic and in determining who is of these religious faiths. The following points remain relevant in Alberta today:

1. *Where a separate school district exists, those persons who are of the faith of those who established the separate district, whether Protestant or Roman Catholic, are residents and ratepayers of the separate school system and are not residents and ratepayers of the public school system (Bartz, Shannon, Bintner, Schmidt).*
2. *Where a separate school district exists, those persons who are not of the faith of those who established the separate district are residents and ratepayers of the public school system and are not residents and ratepayers of the separate school system (Neida).*
3. *A property taxpayer cannot effect a change of residency by directing his or her taxes to the other system. This would be an error in law. Residency is determined solely by the religion of the individual (Bintner, Schmidt).*
4. *It is the religion of the parent, not the child, which determines which system is required to provide education services to the child (Shannon, Schmidt).*
5. *When a vote is successfully held to establish a separate district, the majority of the minority compels the entire minority to join the separate system. The minority of the minority is bound by the decision of the majority of the minority the same as it is if the vote is defeated (Bartz, Shannon, Bintner, Schmidt).*
6. *The system of public and separate schools does not offend the Individual Rights Protection Act of Alberta (Schmidt).*
7. *The term Roman Catholic refers to a Christian church in communion with Rome and the Roman See and to those adherents who recognize the authority of the Pope. (Roschko).*
8. *The term Protestant refers to those denominations that are Christian and do not recognize the authority of Rome. The term does not mean all non-Roman Catholics, but does mean all Christian non-Roman Catholics (Hirsch, Perron).*
9. *For the purpose of the legislation, the various Protestant denominations collectively are themselves a denomination, which represents a class of persons to which the rights protected under section 93 of the* Constitution Act *(1867) are applicable. It is not necessary that there be uniformity of beliefs among the various Protestant denominations. The various Protestant denominations individually do not have rights under section 93 (Ulmer, Hirsch, Perron).*

10. *While section 93 of the* Constitution Act *(1867) protects every right or privilege to denominational schools which any class of persons had at the union, it was not intended to freeze the education system of the province as it was then. It authorizes provincial legislatures to make laws regarding education, subject only to its provisions; to effectively exercise this power, legislatures need a large measure of freedom to meet new needs and circumstances (Hirsch).*
11. *The court will not explore the mind and conscience of electors to determine their faith for public and separate education purposes. Electors are considered to be of the faith they declare (Starland).*
12. *Requesting electors to sign a declaration that they are of the minority faith entitled to establish a separate school district, with no element of compulsion, cannot be said to be an intrusion by the state into the religious freedoms of those invited to make such a declaration (Starland).*

CHAPTER TWO

THE ALLOCATION OF CORPORATE PROPERTY ASSESSMENT

Introduction

This chapter will consider judicial decisions relevant to the proper allocation of corporate property tax assessment between the public and separate school systems. The subsequent three chapters will review cases involving the impact of such governance issues as the ability of the province to dictate educational policy direction to separate jurisdictions, to replace an elected board of trustees, or to modify their boundaries.

The Allocation of Property Assessment

Where a separate school jurisdiction exists within a public school jurisdiction, how should the property tax assessment be properly allocated between the two? It has already been referenced that the ratepayers establishing a separate school are only liable to such property tax rates as they impose upon themselves. But what about properties not owned by individuals; how are the assessments on corporately owned properties to be shared between the public and separate schools? To what degree can the provinces control a separate board's access to the property assessment base?

The Gratton Case (1915): *Regina Public School District 4 v. Gratton Separate School District No. 13, [1915] 50 S.C.R. 589, Supreme Court of Canada.*

Sections 9 and 93 of the *Assessment and Taxation in School Districts Ordinance* (1901), Chapter 30 of the North-West Territories, enabled a company to give notice that the whole or part of its property was to be assessed for separate school purposes (the former section in relation to rural districts and the latter in relation to urban districts):

> Provided always that the share or portion of the property of any company entered…for separate school purposes…shall bear the same ratio…as the amount or proportion of the shares or stock of the company…possessed by persons who are Protestant or Roman Catholics as the case may be bears to the whole amount of such…shares or stock of the company.

Consistent with Chapter 30, the *School Assessment Act* of Saskatchewan (1909) authorized any incorporated company to give a notice to the municipality requiring a portion of the school taxes payable by the company to be applied to the purposes of separate schools.

In 1913, the Saskatchewan Legislature enacted the *Saskatchewan Statutes* (1912-1913); section 3 added section 93a to section 93 of the *School Assessment Act* (1909). Section 93a authorized separate school boards themselves to give a notice to any company, which had failed to give the notice under section 93, that unless and until they had given such notice the school taxes payable by them would be apportioned between the public and separate boards "in shares corresponding with the total assessed value of assessable property assessed to persons other than corporations" for public and separate school purposes. "Alberta had passed similar amendments in 1910" (Maybank, 1998: p. 343).

Promptly after the passage of the amendments to the *School Assessment Act*, the Gratton Separate School District No. 13 gave the proper notices to such companies under section 93a. The Regina Public School District No. 4 claimed the whole of such taxes contending that section 93a prejudicially affected the rights of certain classes of persons with respect to schools within the meaning of section 17 of the *Saskatchewan Act* (1905).

On November 12, 1913, the City of Regina commenced an action by issuing an originating summons for the purpose of determining the respective rights of the public and separate school districts to certain school taxes collected by the city. On December 4, 1913, Justice Lamont defined the questions for the opinion of the court as a) had the Saskatchewan Legislature jurisdiction to enact section 93a, b) if the first answer is no, has the Gratton separate board the right it claims to a portion of the said taxes, and c) if the first answer is yes, has the separate board the right it claims to a portion of the said taxes?

The judgment was given on May 16, 1914. Justice Brown held that public school supporters were prejudicially affected by section 93a, but that, nevertheless, the enactment was *intra vires*, within the jurisdiction of the legislature, and that Gratton was entitled to the portion of taxes it claimed. The Regina public school board appealed first to the Saskatchewan Supreme Court, which affirmed the decision of Justice Brown.

This was clearly a difficult case for the Supreme Court of Canada, since all five justices rendered separate opinions. Justices Davies and Duff expressed no opinion on the constitutionality of the legislation, concluding that question c) is answered in the negative in any event. Justice Idington concluded that the enactment of section 93a was *ultra vires*, beyond the jurisdiction of the Saskatchewan Legislature, noting "I see no half-way house such as question b) seems to suggest may exist" (par. 59). Thus, three of five justices answered question c) in the negative, allowing the appeal. In an unusual twist of jurisprudence, Chief Justice Sir Charles Fitzpatrick, in his dissenting opinion, contributed the majority opinion that the legislature had jurisdiction to enact section 93a and that section 17 of the *Saskatchewan Act* (1905) protected only the religious minority. Justice Anglin concurred that he was "not…prepared to hold section 93a to be ultra vires" (par. 74). But the Chief Justice and Justice Anglin were in the minority when they concluded, consequently, that the taxes payable by the companies in question should be apportioned between the public and separate school boards.

Chief Justice Fitzpatrick understood the silence of Justices Davies and Duff on question a) as affirmative support:

> We are all, with the exception of Mr. Justice Idington, of opinion that the first question was properly answered in the affirmative (par. 2).
>
> To hold, as in the majority we do, that the Legislature of Saskatchewan was competent to enact…section 93a…in amendment of section 93, chapter 30, of the ordinances of the North-West Territories passed in the year 1901, it is sufficient to refer to section 17 of the Saskatchewan Act (par. 3).

The Chief Justice placed particular emphasis on subsection 2 of section 17 of the *Saskatchewan Act* (1905):

> (2) In the appropriation by the Legislature or distribution by the Government of the Province of any moneys for the support of schools, organized and carried on in accordance with the said chapter 29, or any Act passed in amendment thereof or in substitution thereof, there shall be no discrimination against schools of any class described in the said chapter 29.

The Chief Justice concluded:

> The importance of that sub-section is so very obvious in the consideration of both the questions now submitted that it will not be necessary to make further reference to it (par. 9).
>
> To answer the first question in the negative it must, therefore, be found that some right or privilege with respect to separate schools which a class of persons had at the date of the passing of the "Saskatchewan Act" was or is prejudicially affected by section 93a now in question (par. 10).

With respect to the wording of section 93a, the Chief Justice concluded:

> The undoubted intention of the legislature as expressed in that language is to provide, in accordance with the spirit and the letter of sub-section 2 of section 17, that the separate schools, whether Protestant or Catholic, are to share equitably in the distribution of the taxes levied upon public companies in the different school districts. And, assuming that is the intention of the legislature, in what respect can it be said that a right or privilege with respect to separate schools…is violated or prejudicially affected by the section (par. 12)?…
>
> The supporter of the public school, which is merely the school of the majority…in a school district has no right or privilege with respect to the separate school, which is the school of the minority in the same district. The separate school supporters alone have special rights or claims in relation to the separate schools…the minority in a school district composes a class of persons which enjoy some special benefit, immunity or advantage with reference to separate schools…above and apart from those rights enjoyed either at common law or under statutory enactment by the other inhabitants of the same district or of the province at large; and it is the rights of that minority which may not be prejudicially affected (par. 13).

Justice Idington based his negative argument of the constitutionality of section 93a on subsection 2 of section 45, the *School Ordinance*, North-West Territories (1901):

> (2) Any person who is legally assessed or assessable for a public school shall not be liable to assessment for any separate school established therein.

Justice Idington concluded, “yet this which is thus expressly forbidden to be done is what section 93a specifically enacts shall be done” (par. 48). Sections 9 and 93 of Chapter 30 provided that the corporate assessment allocated to the separate district (the former in rural districts and the latter in towns and villages) “shall bear the same ratio” as the shares or stock held by persons of the minority faith bears to the whole amount of the shares or stock. The Justice asked:

> What does this mean if not an express prohibition against any greater part thereof than indicated being made applicable to separate school support (p. 54)?

The argument presented by Justice Idington was based on the perspective that sharing the corporate assessment in proportion to the non-corporate assessment could result in a higher portion of the company’s assessment going to the separate schools than would be justified by an actual count of shareholders of the minority faith. However, it was just as probable that a smaller portion could be allocated to separate schools. The amendment was certainly considered fairer by the majority of the Justices, in keeping with section 17(2) of the *Saskatchewan Act* (1905), than the original section 93 of the *School Assessment Act* (1909) which deprived separate districts of their justified allocation whenever the enabled company simply failed to file the anticipated notice.

In addressing question c), Justice Davies reasoned, with Justice Duff agreeing, that sections 93 and 93a "must be read and construed together" (par. 29). Section 93 was a permissive section authorizing a company to do something that they could do only by having "ascertained with certainty the religious persuasions or belief, or connections of its various shareholders… The grossest injustice might be done" (par. 32) to the public or separate schools if any company attempted to exercise its privilege in the absence of such information. The words in section 93a, "any company failing to give a notice as provided in section 93," must have referred only to companies that possessed that knowledge yet failed to give it. It could not have been intended for companies in which none of the shareholders were of the minority faith or that did not have the requisite knowledge to give the notice.

Gratton was an unusual case. At the very least it must be a judicial anomaly for a Chief Justice of the Supreme Court of Canada to have put forth the majority opinion on one of the questions before the court within the context of writing his own dissenting opinion. The aggregate result of the Supreme Court's decision is that the Saskatchewan Legislature was constitutionally entitled to enact the amending statute, but the resulting section 93a did not entitle the separate board to any portion of the corporate taxes it had claimed.

> Two of 3 members of the Court ruling on the issue found that the province did have constitutional authority to pass such legislation augmenting the tax base for separate boards at the expense of public boards. They reasoned that section 17 was intended to protect only the rights of the religious minority. However, the separate boards' claim for an enhanced tax base pursuant to the provisions was defeated because of the inadequate wording of the impugned legislation (Maybank, 1998: p. 343).
>
> In 1915 the Saskatchewan Legislature rephrased the section, to avoid the previous ambiguity, and the Act so altered was held to be intra vires of the province (Fenske, 1968: p. 119).

The Jones Case (1977): *Jones v. Edmonton Catholic School District No. 7, [1977] 2 S.C.R. 872, Supreme Court of Canada.*

Lloyd Neville Jones, a ratepayer in the City of Edmonton, filed a number of complaints with the Court of Revision alleging that there had been an improper entry and assessment of the property of various companies in support of separate schools. On application of the Edmonton Catholic Separate District, a court order was made prohibiting the Court of Revision from hearing and deciding the complaints of Jones on the basis that the Court of Revision did not have jurisdiction. The Alberta Supreme Court, Appellate Division, affirmed the order with minor variations. Jones took his appeal to the Supreme Court of Canada. The Edmonton Catholic Separate District cross-appealed alleging that the Appellate Division erred in varying the order of prohibition by recognizing that there was a limited jurisdiction in the Court of Revision to consider and determine the complaints of Jones.

Justice Martland delivered the Supreme Court's unanimous judgment. He concluded that the Court of Revision could consider a complaint relating to a corporation. With respect to the question of improper entries of the assessments of various companies for separate school purposes, Justice Martland made reference to a number of sections of the *School Act* (1970), including:

> 60. (1) Where a separate school district exists, a corporation that has shareholders or members of the same religious faith as those who established the separate school district may, by giving notice to the proper officer of the municipality require a percentage of the property in respect of which it is assessable to be entered and assessed for separate school purposes.

Subsections (2) and (3) provided that the notice shall designate the percentage of the property of the corporation in the district for separate school purposes in the same ratio as the number of shares held by separate school supporters bears to the total shares or the number of members who are separate school supporters bears to the total number of members.

> 63. (1) Where a corporation has not given a notice under section 60, the board of a separate school district, by giving notice, may require part of the property in respect of which the corporation is assessable to be entered and assessed for separate school purposes…

> (3) The notice shall be given on or before December 15 and becomes effective on the following December 31 and remains in effect until the corporation gives a notice in accordance with sections 60 and 61, or a notice under subsection (4).
>
> (4) If, before December 31 of any year, a corporation gives to each person mentioned in section 61, subsection (1) a statement under the seal of the corporation that all of the shareholders of the corporation are of the same religious faith as the electors of the public school district, the notice of the board of the separate school district under subsection (1) is not effective with respect to any subsequent year…
>
> 64. Where the board of a separate school district has given a notice to a corporation under section 63, the proper officer of each municipality shall designate a percentage of the property of that corporation in the district assessable for separate school purposes which shall bear the same ratio to the total assessed value of the property of the corporation in the district as the assessment of property in the district of persons, other than corporations, who are separate school supporters, bears to the total assessed value of the property in the district of all persons, other than the corporations.

Justice Martland stated that "the issue here is as to the validity of notices filed by the Board under s. 63 in cases where the corporation affected has no shareholders who are separate school supporters" (par. 31). The appellant, Mr. Jones, referenced the decisions of Justices Davies and Duff in the *Gratton Case* in formulating their position noting that section 60, which was confined to corporations that have shareholders of the minority faith, and section 63 must be read together:

> The words "Where a corporation has not given a notice under section 60" must be construed as being applicable only in a situation where the corporation could have filed a notice under s. 60 but failed to do so. A corporation which has no shareholders who are separate school supporters could not, under s. 60, require a part of its property to be entered and assessed for separate school purposes (par. 33).

Justice Martland did not support Mr. Jones and pointed out the distinctions between section 63 of the *School Act* (1970) and section 93a of the earlier Saskatchewan statute in two respects. First, the wording of section 93a referred to a company "failing" to give a notice as provided in section 93, which suggested the corporation had not done something which it was able to do. Section 63 of the Alberta statute did not refer to a failure but to the fact that a notice had not been given.

Second, "and more important" (par. 39), section 63 had subsection (4). No such provision was contained in section 93a. Subsection (4) had been added to the predecessor of section 63 by section 19 of the *Alberta Statutes* (1955).

> It was obviously enacted to meet the difficulty which had previously existed, and which existed under s. 93a, that a notice by the separate school board on a corporation under s. 63 would continue in effect thereafter because the corporation could not file a notice under s. 60, which was the only way of bringing the operation of the school board notice to an end (par. 39).

Subsection (4) enabled a corporation served with a notice under section 63 to bring its effect to an end if it served a statement that all of its shareholders were of the same religious faith as the electors of the public school district. Clarification was noted that by virtue of sections 2(e) and 53 of the *School Act* (1970), "electors of the public school district" in subsection (4) referred to all electors other than those who are separate school supporters. Justice Martland concluded:

> The clear implication is that, in the absence of a statement by the corporation under subs. (4), the separate school board notice under subs. (1) is effective even in respect of a corporation all of whose shareholders are of the same religious faith as the electors of the public school district (par. 40).

The respondent, Edmonton separate board, had referenced sections 9 and 93 of the *Assessment and Taxation in School Districts Ordinance* (1901), Chapter 30 as protected by section 17(1) of the *Alberta Act* (1905). Subsection (2) of both sections 9 and 93 stated that:

> Any such notice given in pursuance of a resolution in that behalf of the directors of the company shall for all purposes be deemed to be sufficient…

The separate board's position was that any subsequent legislation by the Alberta Legislature that would permit a challenge to the company's apportionment would be a breach of section 17(1) of the *Alberta Act* (1905). Justice Martland did not accept that contention:

> The right or privilege which companies had under ss. 9 and 93 of the Ordinance was to allocate the assessment of part of their property for separate school purposes, but only in proportion to the number of shares held by shareholders who were Roman Catholics as compared to the total of all shareholders. The right of a company was no greater than that…a provision which enables the apportionment to be challenged does not in any way diminish the right to apportion. Section 17(1) did not guarantee the right to make a false apportionment (par. 51).

The Calgary Public Case (1981): *Re Calgary Board of Education and Attorney General for Alberta et al., [1979] 106 D.L.R. (3d) 415, Alberta Court of Queen's Bench, affirmed [1981] 122 D.L.R. (3d) 249, Alberta Court of Appeal.*

Section 64.1 was added to the *School Act* (1970) by the *Alberta Statutes* (1978) and amended by the *Alberta Statutes* (1979). Section 64.1 provided that, where a separate district was situated wholly or partly within a municipality, the municipality shall also designate a portion of the assessment of properties owned or leased by the municipality or owned by the Government of Alberta for separate school purposes. The assessment was to be divided in proportion to the number of resident pupils of the public board and the separate board residing in that municipality.

In 1979, the Calgary Board of Education, the public board for the City of Calgary, made application to the Court of Queen's Bench to declare certain sections of the *School Act* (1970) invalid on the grounds that they infringed the constitutional protection afforded by section 93 of the *Constitution Act* (1867) and section 17 of the *Alberta Act* (1905). The Calgary Roman Catholic Separate District was authorized to intervene and became an added respondent to the Attorney General of Alberta.

The applicant public board's position was that the way the *School Act* (1970) provided for the distribution of corporate taxes, payments in lieu of taxes, and for a non-member of the minority religion to opt to support the separate board violated the protection given to the separate board by subsections 1 and 2 of section 17 of the *Alberta Act*. Section 17(1) is written in terms of "prejudicially affecting" "rights or privileges" with respect to separate schools. Does section 17(1) protect only the separate boards? Section 17(2) is directed against "discrimination against schools of any class." Does section 17(2) protect the public school board and, if so, what is the scope of that protection?

Justice Stevenson referenced section 57(2) of the *School Act* (1970) as illustrating the applicant's position in attacking a number of sections:

> 57(2) Where a person is neither a Protestant nor a Roman Catholic, his property is assessable for the public school district (and he is deemed to be a public school supporter) or, if he supports the separate school district, his property is assessable for the separate school district (and he is deemed to be a separate school supporter).

The applicant's concern with section 57(2) was in relation to section 45(2) of the *School Ordinance* (1901), Chapter 29, as protected by section 17(1) of the *Alberta Act* (1905):

> 45(2) Any person who is legally assessed or assessable for a public school shall not be liable to assessment for any separate school established therein.

The scheme in place when the *Alberta Act* (1905) came into effect provided that the only taxes payable to a separate board were from property owners professing the faith of those who had established the separate district. But section 57(2) permitted the person who was neither of the Protestant nor of the Roman Catholic faith to choose whether to support the public or separate district. It was the public board's position that, in permitting a person who would otherwise not be legally assessable for a separate school to be assessed for a separate school, section 57(2) was a breach of the constitutional limitation.

Justice Lamont in the *Neida Case*, had held that a person who was not of the minority religious faith could not escape the obligation of being assessed for the support of the public school. "Only those to whom the right of separation is given can escape the general obligation to support the public school" (par. 14). However, Justice Stevenson noted the distinction that there was, in the *Neida Case*, no legislation such as section 57(2) of the *School Act* (1970). "The issue raised here was not raised there" (par. 14). He referenced Justice Stuart in the *Ulmer Case*:

> It is only the rights and privileges in respect to separate schools as given by the Ordinances of 1901, chs. 29 and 30 whatever they were, which are protected and preserved (par. 15).

Justice Stevenson noted that in the *Gratton Case* "the ratio of the majority decision is that there was no constitutional issue" (par. 16). He quoted first from Justice Anglin's and then from Chief Justice Fitzpatrick's dissenting opinions which had given voice to that majority decision:

> The legislature did not recognize any "class of persons" comprised in the majority in the district as requiring or entitled to separate school rights or privileges…they were not a class of persons whom it was deemed necessary to protect (par. 16)…
>
> The supporter of the public school, which is merely the school of the majority, Protestant or Catholic, in a school district has no right or privilege with respect to the separate school, which is the school of the minority in the same district. The separate school supporters alone have special rights or claims in relation to the

> separate schools in districts in which they have exercised their right to separation (par. 17).

With respect to section 17(1) of both the *Alberta Act* (1905) and the *Saskatchewan Act* (1905), Justice Stevenson came to the conclusion that:

> …s-s. (1) is protective legislation. It guarantees certain rights to the minority residents and the boards established by them and it does not lie in the mouth of the public board to attack legislation on the basis that its rights are prejudiced (par. 19).

It is interesting to note that Justice Stevenson did not say that section 57(2) of the *School Act* (1970) was not a breach of constitutional limitation as put forth by the public board. He said that, because section 17(1) of the *Alberta Act* (1905) recognized only the rights of separate schools, the public board had no protected right to complain about it. It is understood that the decision might have been quite different had the separate board brought a complaint with respect to section 57(2) permitting ratepayers not of the faith of those who established the separate district to be separate school supporters. That concern would prompt the Government of Alberta to remove the provision of choice for those who were neither Protestant nor Roman Catholic under the new *School Act* (1988). However, it is noted that under the *Neida Case*, Mr. McCarthy, a separate school ratepayer, had argued in favour of a ratepayer not of the minority faith being allowed to support the separate district.

In turning to section 17(2), Justice Stevenson again returned to Chief Justice Fitzpatrick in the *Gratton Case* who had said the object of subsection (2):

> …was to secure to all the schools, whether public or separate, their fair share in the appropriation and distribution of any money for the support of schools (par. 21).

Justice Stevenson agreed with the applicant Calgary public board that subsection (2) is designed to ensure fairness. But as to the public board's position that assorted sections of the *School Act* (1970) breached subsection 17(2), Justice Stevenson chose to dispose of that argument in relation to section 64.1 of the *School Act* (1970). Since properties owned by municipalities and the province were otherwise exempt from taxation, the payments to school boards resulting from section 64.1 were considered "grants in lieu of taxes" (par. 28). With respect to the question of breaching section 17(2), Justice Stevenson concluded:

> Apart altogether from the anxiety of the applicant there is no evidence on which to conclude that grants in lieu of taxes distributed in accordance with the new formula result in adversely affecting the public board (par. 28)...
>
> It seems to me that looking at the prohibition in s. 17(2) one would have to say that a grant structure was designed to work against a particular class of school...There is no evidence upon which I could conclude that a class has been discriminated against. Indeed, a per pupil distribution of tax moneys has the appearance of being fair (par. 29).

In rendering his decision, Justice Stevenson chose an unusual phrase when he said, "it does not lie in the mouth of the public board to attack legislation on the basis that its rights are prejudiced" (par. 19) and had stated, in essence, that the only adverse effect section 64.1 had caused the public board was anxiety. His choice of words suggest at least a mild rebuke of the public board for their application and a touch of wit, which is always a welcome relief for any student of judicial text. But the wayward Calgary public board was neither impressed nor satisfied and took their case to the Alberta Court of Appeal, where it fared no better.

Justice McDermid delivered the unanimous decision of the Court of Appeal. "I adopt the judgment of the trial Judge, Mr. Justice Stevenson, as I am in complete agreement with it" (par. 1). Nevertheless, Justice McDermid wished to add a few comments of his own. He referenced Viscount Cave of the Privy Council in the *Hirsch Case* that held that section 17(1) of the *Alberta Act* (1905) protected those of the dissentient minority alone, "leaving the majority to protect themselves through the use of the democratic instrument, the ballot box" (par. 7). Justice McDermid had the following to add relevant to subsection 17(2):

> I think the legislation attacked in this case has produced what the average citizen, whatever his religious persuasion, would consider a fairer state of affairs than to divide taxes on the property of a company on the basis that the company must prove the number of its separate school supporters. It is quite impossible for many companies to ascertain the religious persuasion of many of their shareholders. A large company not only has shareholders that are trust companies, but international companies, and to ascertain where there are several tiers of company shareholders, the religious persuasions of the shareholders is quite impossible (par. 13).

If Justice Stevenson had indeed given the Calgary public board a mild rebuke, Justice McDermid may have redirected the impact when he found it necessary to make a final point of expressing a different perspective:

> Although I have stated that in my opinion the present scheme of dividing taxes between separate schools and public schools is fairer than the previous system, I do not wish to be critical of the Calgary Board of Education for raising the issue, for as trustees they have the duty to protect the interests of their electors (par. 14).

***The Greater Hull Case (1984)**: Quebec (Attorney General) v. Greater Hull School Board et al., [1984] 2 S.C.R. 575, Supreme Court of Canada.*

The *Greater Hull Case* has been referred to as "the leading case on section 93" of the *Constitution Act* (1867) "and funding" of separate schools (Smith and Foster, 2001, March: p. 413). In 1979, the Province of Quebec introduced Bill 57, *An Act respecting Municipal Taxation and providing amendments to certain legislation* (1979), which amended the *Education Act* (1977). The chief feature of this *Act* (1979) was the creation of a new system of school financing based primarily on government grants with taxation playing only a minor and restricted role:

1. The Minister of Education must annually make budgetary rules determining the amount of expenses allowable for the grants to be paid to school boards;
2. The school commissioners and trustees must levy taxes to provide for expenses not covered by government subsidies or grants;
3. The tax levy may not exceed 6 percent of the net expense of the school board or 25 cents per hundred dollars of assessment; and
4. In order to levy taxes in excess of these limits the school board must obtain the approval of the electors in a referendum.

The Greater Hull School Board, a Protestant dissentient board, alleged in Quebec Superior Court that the *Act* (1979) violated its rights under section 93 of the *Constitution Act* (1867) on several grounds: 1) the *Act* (1979) denied the board the right to determine the level of their expenses expressly; 2) it did not provide for grants as a right; 3) it did not expressly provide for grants being made on a proportional basis; and 4) the power to tax beyond a given ceiling was limited for all practical purposes because of the requirement for a referendum (Maybank, 1997). Other parties to the action stated that the fundamental purpose of the *Act* (1979):

> …is to remove all school boards from the real estate tax field, in order to give towns and other municipalities unimpeded real estate taxation powers (par. 4).

The Superior Court dismissed Greater Hull's actions. By a majority judgment, the Quebec Court of Appeal reversed that judgment and held that the amendments to the *Education Act* (1977) were "ultra vires, null and void" (par. 20). The Attorney General of Quebec appealed to the Supreme Court of Canada.

The Supreme Court unanimously affirmed the Court of Appeal's decision. In delivering the court's decision, Justice Chouinard stated:

> …what the Minister fixes in his budgetary rules is the amount of the expenses which will be eligible for grants, not the amount of expenses of school boards and trustees. The latter are free to set their expenses at the level they consider necessary, but they will have to impose taxes for any amount exceeding the grants…This first objection is without foundation (par. 50).

The *Consolidated Statutes of Lower Canada* (1861) had conferred on the Superintendent of Education a duty to distribute grants and conferred on commissioners and trustees a right to receive their share:

> However, when s. 15.1 of the Education Act says that the Minister shall make budgetary rules to determine the amount of expenses allowable for grants to be paid to school boards…this includes them all and means that grants must be paid to them (par. 51).

The second objection was also held to be invalid.

Greater Hull's third objection was upheld. The *Consolidated Statutes of Lower Canada* (1861) spoke about proportionality in a plurality of applicable sections:

> I do not doubt that the legislator intended that the Minister's budgetary rules should be based on proportionality, and the grants are established on a proportional basis, as was indicated at the hearing. However, while the 1861 Act provided this expressly, it is not stated by s. 15.1 of the Education Act. In my opinion, it is a right conferred by law at the time of the Union, which is protected by s. 93 of the Constitution Act, 1867 (par. 56).

The fourth objection, the requirement to hold a referendum, was challenged by Greater Hull on three grounds: 1) there was no such condition in 1867, 2) the procedure is so cumbersome and costly as to be almost unrealistic constituting an impediment to the taxing power, and 3) "any elector would be entitled to vote in such a referendum, whether or not his religious affiliation is that of the school board in question" (par. 58). Justice

Chouinard concluded that the principle of a referendum itself is not an infringement of the taxing right making it unconstitutional, since there is no limit on the taxing right. "It is only that the legislator has thought it proper to confer a supervisory power on persons who, in fact, are members of the class of persons whose rights are protected" (par. 59). Justice Chouinard quoted from the dissenting opinion of Justice Vallerand of the Quebec Court of Appeal in the case, respecting Greater Hull's concern for the constitutionality of the referendum. "I cannot share their anxiety. In fact, I have the impression that the alleged constitutional guarantees are being claimed for representatives and mandataries against their electors and mandators, who are the sole beneficiaries of those guarantees" (par. 59).

Regarding the second concern that the referendum would be so cumbersome and costly as to be an impediment to the taxing power, Justice Chouinard first quoted Justice Trotier of the Quebec Superior Court in the case. "The cost will undoubtedly be high and it will be a source of inconvenience to school administrators, but the National Assembly probably considered that greater democratization of relations between governors and governed justified this" (par. 62). Justice Chouinard noted that an interference with a legal right or privilege might not in all cases imply that such right or privilege has been prejudicially affected:

> The school boards retain the power of taxing without limit, subject to the requirement that they submit the tax to a referendum in certain cases, but it was not shown that this was impractical and constituted a denial of the right (par. 67).

Of more concern was the third argument that in some cases any elector would be entitled to vote in the referendum, whether or not he was of the religious affiliation of the school board in question. It was clarified that this concern did not apply to dissentient boards in the Province of Quebec, since section 83 of the *Education Act* (1977) provided that only dissentients may vote at the election of dissentient trustees, and the same rule applied when a tax was submitted to the approval of the electors. However, this did not solve the problem of the Roman Catholic and Protestant confessional school boards. It was noted that the *Act* (1979) made specific amendments effecting the Island of Montreal. The Island of Montreal had a single budget, including the budgets of all school boards and the municipal council. The municipal council alone had the right to tax. In the case of a referendum, the electoral list is prepared for the whole Island of Montreal:

> This means that the increase in tax occasioned by a particular school board is subject to approval by all the electors in the Island of Montreal…Under the 1861 Act…Catholic and Protestant commissioners in Montreal and Quebec and the trustees of dissentient schools had the power to levy such taxes on their Catholic or Protestant population…It is a prejudicial invasion of the rights and privileges of classes of persons encompassed by s. 93 to subject the exercise of power of a school board to decide on an expense requiring a tax, to the approval of all electors in the Island of Montreal, whatever school board they belong to and whatever their affiliation. For this reason, the provisions regarding the referendum must be held ultra vires and void (p. 15).

Justice Chouinard had rejected the provision for a referendum on the nature of its application to the Island of Montreal. In his minority opinion, Justice Le Dain agreed that the referendum requirement was unconstitutional but contrary to the majority position, believed that the principle of a referendum itself was an infringement of the taxing right and unconstitutional:

> While the requirement of approval by referendum for taxation…may be said to enlarge the democratic rights of the individual member of the class and to be a measure for the protection of his or her pocketbook, it is a measure or requirement which, because of its cost and uncertainty of outcome as indicated in the evidence, is prejudicial to the effective management of denominational schools in the interests of the class as a whole (par. 86).

Justice Chouinard had brought his findings to a close as follows:

> Because the disputed provisions omit to state that the grants must be distributed on a proportionate basis, and because in a referendum the will of a school board may be subject to the will of electors not within their districts, I conclude that these provisions must be found to be ultra vires and void. The provisions form a whole, and if those which deal with how grants are made and which govern approval by the electors are set aside, the other provisions fall as well (par. 80).

On the face of it, the separate school boards had won their case, but the victory was illusory. In the *Act to amend the Education Act and various legislation* (1985), the Quebec government provided for proportionality of grants and corrected the provisions governing voting rights in a referendum (Smith and Foster, 2001, March). The *Greater Hull Case* is particularly interesting because it allowed the province "to restrict the ability of boards to raise money through local taxes and impose a referendum requirement – a matter of great practical significance" (Maybank, 1998: p. 333).

The Calgary Separate Case (1985)*: Calgary Roman Catholic Separate School District No. 1 v. Calgary Board of Education, [1985] A.J. No. 613, Alberta Court of Appeal.*

The *School Act* of Alberta (1980) represented in many respects a simple renumbering of the sections of the *School Act* (1970) to allow for interim amendments. Section 60 of the *School Act* (1970), which enabled a corporation to require a percentage of its assessment to be entered for separate school purposes in proportion to the number of its shareholders or members who were separate school supporters, became section 62 of the *School Act* (1980). Section 63, which empowered a separate board to give notice to a corporation that had not filed the aforementioned notice requiring a portion of the corporation's assessment to be allocated for separate school purposes, became section 68.

What did change was the method of allocating a corporation's assessment based on a notice provided by the separate board. Under section 64 of the *School Act* (1970), the percentage assessable for separate school purposes was to be the same as the percentage of non-corporate assessment in the district assessable for separate school purposes. However, section 70 of the *School Act* (1980) allocated this corporate assessment in proportion to the pupil populations of the two districts, as was introduced in 1978 for the allocation of the grants in lieu of taxes for properties owned by municipalities and the province.

Section 66(2) of the *School Act* (1980) provides that a notice by a corporation under section 62 must be filed with the municipality on or before December 1 in each year. Separate boards became quite diligent about filing notices under section 68 for corporations that had not exercised their entitlement under section 62. Under subsection 68(3):

> (3) The notice shall be given on or before December 15 and becomes effective on the following December 31 and remains in effect until the corporation gives a notice in accordance with sections 62 and 66, or a statement under subsection (4).

Subsection 68(4) of the *School Act* (1980), like subsection 63(4) of the *School Act* (1970), provided a corporation the opportunity to negate the effect of the separate board notice with respect to any subsequent year. The corporation could accomplish this by providing a statement, before December 31 of any year, that all of the shareholders of the corporation were of the same religious faith as the electors of the public school district, that is, not of the faith of those who established the separate district.

The Calgary Board of Education adopted the practice of writing to each corporation whose current assessment had been split on the basis of resident pupils suggesting they complete a return based on the number of shareholders. A handy "return" was enclosed for the purpose. In the year giving rise to this case, these letters had been sent out on November 3. The letters did not explain the two approaches. They merely stated that, unless the enclosed returns were remitted, 23 percent of the corporate assessment would go to the separate district. The Calgary Catholic Separate School District, in turn, wrote all corporate ratepayers after December 1 and before December 15 invoking the split on the basis of resident pupils. The separate board's notice did not explain the two approaches either. It merely stated that the split on the basis of resident pupils would apply "until the said corporation gives a notice in accordance with s. 62 and 66 or 68(4)" (par. 3).

The Calgary Catholic Separate School District made application to the Court of Queen's Bench for an order that any corporate return based on the number of shareholders filed prior to the giving of the separate district notice was invalid. The lower court declined the request and Justice Kerans of the Alberta Court of Appeal agreed. Nothing in the wording of section 68 permitted this interpretation. If the position of the separate district had been correct, the separate district could have delayed giving its notice until after December 1. At that point a return based on the number of shareholders would have been invalid as late, under section 66(2), unless it came within the narrow exception permitted under section 68(4). Justice Kerans noted:

> It is correct that the words "on or before December 15" in s. 68(3) do not prohibit notice before December 1. Nevertheless, the opening words of s. 68(1) are "If a corporation has not given a notice under section 62…" I conclude that, on the very wording of the section, the power of a separate district under s. 68(1) is triggered by the failure of a corporation to make a return pursuant to s. 66(2). It is a default mechanism. The only corporation which is spared the effect of default is

> that described in s. 68(4). The words do not lend themselves easily to any other view (par. 15).
>
> The separate district argues that the legislative object in enacting s. 68(1) was to give a corporation the right to choose between the two approaches to allocation of assessment. Both alternatives are not open to it until the separate district gives notice under s. 68(1); therefore, the choice must await that notice (par. 16)...
>
> I cannot agree...that the evident object of the enactment of what is now s. 68 was to give a corporate rate payer a choice between the two approaches...any "right" to the pupil-population approach arrives through the back door. A corporation cannot invoke that approach except by remaining silent and allowing the approach to come by default (par. 17, 18).

Justice Kerans offered this insight into the change in legislation that permitted separate boards to serve notice on corporations:

> ...the true object of the enactment of the scheme in ss. 68-70, in other words the pupil-population approach, was to remedy evident mischief under the old system...only a public district benefited from the failure of a corporation to make a return. Under the old scheme, if a corporation did not make a return stating the shareholders who were of the same religious affiliation as those comprising the separate district, then the entire corporate assessment went to the public district. This must have been a major mischief; in this age, it is impossible for a large commercial corporation to discover the religious affiliation of its many shareholders. Large public corporations simply could not make a return under s. 62. In the result, the separate district was unfairly deprived of a share of substantial assessments. The new default provision guarantees to both districts, on a fair basis, a share of the assessment of a corporation the religious affiliation of whose shareholders is not declared (par. 19).

Key Findings

The following are the key findings from this set of judicial decisions having relevance in Alberta. Points one to four remain relevant in Alberta today. Points five to seven ceased to have a practical application in Alberta when the Province of Alberta assumed responsibility for the levying of property taxes for education purposes in 1994.

1. *A supporter of the public school, which is the school of the majority, has no right or privilege with respect to the separate school, which is the school of the minority. It is the rights of that minority that are constitutionally protected and may not be prejudicially affected. This leaves the majority to protect themselves through the use of the democratic process at the ballot box (Gratton, Calgary Public).*

2. *In the appropriation by the legislature or provincial government of any moneys for the support of schools, there shall be no discrimination between public and separate schools. Funding distribution is to be equitable and based on fairness (Gratton, Greater Hull).*
3. *The Province has the constitutional authority to pass legislation ensuring equitable access to corporate assessment for public and separate jurisdictions (Gratton, Calgary Public).*
4. *The requirement for a separate board to conduct a referendum of separate electors to access its property tax base is not an infringement of the separate board's taxing right making it unconstitutional. It merely confers a supervisory power on the persons whose rights are protected (Greater Hull).*
5. *Separate boards were properly entitled to serve a notice on a company, which had not filed its own notice relative to the allocation of its property assessment, requiring that the company's assessment be shared between the public and separate district in proportion to the number of resident pupils (Jones, Calgary Separate).*
6. *Sharing corporate assessment or "grants in lieu of taxes" for municipal or provincial properties between the public and separate districts in proportion to the number of resident pupils met the test of non-discrimination and fairness (Calgary Public, Calgary Separate).*
7. *It was not possible for a large corporation to discover the religious affiliation of its many shareholders. Sharing the assessment on the basis of the number of resident pupils guaranteed both the public and separate districts a fair share of such assessment (Calgary Public, Calgary Separate).*

CHAPTER THREE

ISSUES OF GOVERNANCE: *ALBERTA ACT* CONSTITUTIONALITY, LANGUAGE OF INSTRUCTION, *and* REMOVING ELECTED SEPARATE TRUSTEES

Introduction

This chapter continues to review court cases from across Canada that have shaped our understanding of separate school rights in Alberta. Our focus will be on judicial decisions impacting broader governance issues such as the constitutionality of the *Alberta Act* (1905) with respect to the provisions of separate schools, a province's ability to dictate educational policy issues to separate jurisdictions such as language of instruction, and a province's ability to remove an elected separate board of trustees from office.

The Constitutionality of Section 17 of the *Alberta Act* (1905)

Within the literature review contained in the initial *Introduction* chapter, reference was made to the political crisis and nationwide controversy that burdened Prime Minister Laurier's government with the introduction into the House of Commons of two identical bills providing for the establishment of the Provinces of Alberta and Saskatchewan. At issue were differences of opinion regarding the separate school question. Laurier resolved the issue within his own cabinet by changing the wording within the bills to reference the *School Ordinances* of 1901 rather than the initially referenced principles sanctioned under the *North-West Territories Act* of 1875. Identical sections 17 were crafted for both the *Alberta Act* (1905) and the *Saskatchewan Act* (1905) making section 93 of the *British North America Act* of 1867 applicable to those provinces but substituting a new paragraph for paragraph (1) of section 93.

> 93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions.-
>
> (1) Nothing in any such law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union.

This amendment served to make clear that the term "by Law" in section 93 referred to Chapters 29 and 30 of the Ordinances of the North-West Territories, passed in the year 1901, and the expression "at the Union" in section 93 meant the date both the *Alberta Act* and the *Saskatchewan Act* came into force, September 1, 1905. Critical to the central issue of the controversy, this change served to clarify that education would be governed at the provincial level by a Department of Education headed by a member of Executive Council, as provided for in the *School Ordinances* of 1901, rather than anything resembling the central Board of Education operating in two distinct sections of Protestant and Roman Catholic, as had been provided for in the *School Ordinances* of 1884. While Laurier's amendment appeared to bring sufficient consensus and clarity in 1905, it would be necessary to revisit the appropriateness of this action.

Alberta Act, s. 17, Reference (1927): *Reference re: Alberta Act, s. 17, [1927] S.C.R. 364, Supreme Court of Canada.*

On January 9, 1926, an agreement was entered into between the Government of Canada and the Government of Alberta. The agreement provided that certain provisions of the *Alberta Act* (1905) should be modified such that all Crown lands, mines, minerals and royalties within the province would thereafter belong to the province. The two governments subsequently agreed that certain additional provisions would be inserted into the agreement relative to the transfer and administration of the School Lands Fund and certain specified school lands, to parks and forest reserves, and to rights and properties of the Hudson's Bay Company. A bill was to be introduced into Parliament to approve and give affect to the agreement as modified, but a question was raised as to the constitutional validity of section 17 of the *Alberta Act* relative to the subject of education and schools within Alberta. It was decided not to proceed with the proposed legislation "until this question of doubt could be authoritatively settled" (par. 2).

By order of the Governor General in Council dated June 24, 1926, the following question was referred directly to the Supreme Court of Canada for hearing and consideration, pursuant to the provision of section 60 of the *Supreme Court Act* (1922):

> Is Section 17 of the Alberta Act, in whole or in part, ultra vires of the Parliament of Canada, and if so, in what particular or particulars (par. 1)?

Justice Newcombe delivered the unanimous judgment of the court on March 7, 1927, supporting the constitutional validity of section 17.

Section 146 of the *British North America Act* (1867) had provided that the Queen, at the request of the Parliament of Canada, could admit Rupert's Land or the Northwestern Territory into the Union on such terms and conditions as requested by the Canadian Parliament and the Queen thought fit to approve, "subject to the Provisions of this Act." Section 2 of *the British North America Act* (1871) provided that the Parliament of Canada might, from time to time, establish new provinces in any territories forming part of the Dominion but not included in any province and might:

> at the time of such establishment, make provision for the constitution and administration of any such province, and for the passing of laws for the peace, order and good government of such province, and for its representation in the said Parliament.

The *British North America Act* (1886) further empowered the Parliament of Canada to provide for representation in the Senate and/or House of Commons of Canada for any territory which forms part to the Dominion but is not yet included in any province.

The counsel appointed by the Supreme Court to represent all interests opposed to the validity of section 17 argued that the Parliament could not vary, for the new Province of Alberta, section 93 of the *Constitution Act* (1867), which defines the provincial legislative powers relating to education. It was argued that the words "subject to the provisions of this Act" found in section 146 of the *British North America Act* (1867) must be read into the broad powers provided by section 2 of the *British North America Act* (1871). Justice Newcombe noted:

> It was ingeniously urged that the provisions referred to were all those which were, in the British North America Act, 1867, common to the original provinces, and that the Territories thus became constitutionally incapable of incorporation into the Union as provinces upon terms or conditions in anywise different from those which applied equally to Ontario, Quebec, Nova Scotia, and New Brunswick. This contention, if maintainable, might have constituted a very serious impediment, if not an insurmountable obstacle, to the framing of satisfactory constitutions, but it does not appear to have occurred to anybody before the hearing of this case, and the argument does not rest upon any sound foundation, as I think the following considerations will show (par. 6).

Justice Newcombe referred to section 3 of the *Alberta Act* (1905), which provided that the *British North America Acts*, 1867 to 1886, shall apply to the Province of Alberta to the same extent as they apply to the provinces previously admitted to the Dominion as if Alberta had been one of the provinces originally united:

> …except in so far as varied by this Act and except such provisions as are in terms made, or by reasonable intendment, may be held to be specially applicable to or only to affect one or more and not the whole of the said provinces.

It was further noted that there was a corresponding provision in the *Manitoba Act* (1870) and in the terms of Union with both British Columbia and Prince Edward Island:

> In each case the provisions of the British North America Act, 1867, were to apply, except so far as varied by the terms of Union, and it was thus, in these particular cases, found not incompatible with admission into the Union with provincial status that the terms of Union should have the right of way…I cannot discover that any terms were introduced which conflict with the provisions of the British North America Act, 1867…Consequently, it is not necessary for present purposes to interpret the general meaning or effect of the words "subject to the provisions of this Act," as found in s. 146 (par. 7).

Finally, reference was made to the second paragraph of section 2 of *the British North America Act* (1886), which declared that:

> Any Act passed by the Parliament of Canada, whether before or after the passing of this Act, for the purpose mentioned in this Act, or in the British North America Act, 1871, has effect notwithstanding anything in the British North America Act, 1867.

Justice Newcombe thus concluded:

> …if the second paragraph of s. 2 of the British North America Act, 1886, be intended to have general application, the case is relieved of any possibility of a suggestion or accent of doubt (par. 10)…
>
> For the above reasons my answer to the question submitted is that s. 17 of the Alberta Act is not, in whole or in part, ultra vires of the Parliament of Canada (par. 11).

The 1926 agreement between the Government of Canada and the Government of Alberta, which provided for amending the *Alberta Act* (1905) to transfer all Crown lands, mines, minerals and royalties within the province to the ownership of the province, proved to be of huge financial significance to the future of Alberta. Also of some significance is the 1927 reference to the Supreme Court of Canada, which enabled that amendment to proceed, but also:

> affirmed the validity of s. 17 [of the] *Alberta Act* itself, and held that Parliament had the authority to amend and alter the manner in which s. 93 of the *Constitution Act, 1867* would apply to Alberta, as implemented by s. 17 of the *Alberta Act, 1905* (Maybank, 1997: p. 23).

Dictating the Language of Instruction *and* Replacing a Separate Board

Beginning in 1914, the Board of Trustees of the Roman Catholic Separate Schools for the City of Ottawa became the focus of a multidimensional, protracted, and bitter judicial wrangling. Over five years would be required before the multiple court actions were concluded but it would take until 1927 before the core issue was resolved.

In dispute were such thorny issues as the ability of the provincial government to dictate the language of instruction to a separate school board, to specify teacher qualifications, or to replace a separate board of trustees with an appointed commission. The numerous associated court actions are divided into three different "cases." The first is the *Mackell Case* (1917). The *Ottawa Commission Case* (1917) and the *Ottawa Bank Case* (1920) will follow. The *Ottawa Commission Case* was undertaken while the *Mackell Case* was in progress. However, for purposes of clarity and this researcher's sanity, they will be considered one at a time. Each case constitutes four court appearances. As a potential guide for these three cases, legal court references are given for each appearance.

***The Mackell Case (1917):** Mackell v. Ottawa Separate School Trustees, [1914] 32 O.L.R. 245, Ontario Supreme Court, High Court Division; [1915] 34 O.L.R. 335, Ontario Supreme Court, Appellate Division; [1917] 32 D.L.R. 1, Judicial Committee of the Privy Council; [1917] 40 O.L.R. 272, Ontario Supreme Court, High Court Division.*

In 1914, Ontario had two classes of primary schools—public and separate. The terms *public school* or *separate school* meant English school. For convenience, the Department of Education annually designated certain public or separate schools attended by French-speaking pupils as English-French. First in June of 1912 and then in August of 1913, the Ontario Department of Education issued Regulations entitled Circular of Instructions No. 17 in relation to English-French Public and Separate Schools. "This Regulation severely limited the use of French as the medium of instruction in all provincially supported schools" (Fenske, 1968: p. 120). The Regulation provided that no teacher would be granted a certificate to teach in English-French schools who does not possess a sufficient knowledge of the English language and any such teachers already appointed in any such schools could not remain in office. Those schools not in compliance were not eligible for funding from the public purse.

The Ottawa separate school board had at that time 192 Roman Catholic separate schools, of which 116 were designated as English-French. However, the separate board failed to comply with the Regulations. On April 29, 1914, one R. Mackell, a separate board trustee, commenced an action on behalf of a minority of the separate trustees and some other Ottawa separate school supporters against his own Board of Trustees of Ottawa's Roman Catholic Separate Schools. That action sought an injunction to restrain the defendants from continuing to employ and pay teachers not possessing the proper legal qualifications or who contravened the Regulation, to restrain the defendants from passing or enacting any by-law to borrow money while the defendants refused to conform to the Regulation, for a mandatory order requiring the defendants to conform to the Regulation, and for an order for the payment of damages and costs by the individual members of the board by whose authority the Regulations were disregarded or contravened. Chief Justice of the King's Bench, Falconbridge, granted an interim injunction in accordance with the requested terms on the above noted date.

The trial began before Justice Lennox on June 25, 1914, when the bulk of the evidence on both sides was given. The defendants asked for and were granted an adjournment "to enable them to make further searches in the records of the Department" (par. 7). The injunction was continued in spite of strenuous opposition by the defendants. The defendant board did not abide by the interim injunction, but instead passed a resolution, opposed by the plaintiff trustees, purporting to delegate to Chairman Samuel M. Genest the entire question of the discharge and engagement of teachers. Genest then proceeded to discharge the entire teaching staff. The defendants had in effect closed down all separate schools in Ottawa, which failed to reopen at the expected time of September 1, 1914. Genest frankly disclosed that this action was taken to create a condition that would compel the Department to consent to the employment of 23 Christian Brothers who were without professional qualification.

Justice Lennox was not amused. He reconvened the trial on September 11, 1914:

> The adjournment was decidedly an indulgence to the defendants, as, so far as I am aware, no intimation of the application was given until the evidence for the defence was well advanced. The object of the action, the terms and aim of the injunction, and the conditions necessarily implied upon an adjournment, should, without more, have been a sufficient guarantee that the efficiency of the schools would be preserved, and the status quo honourably maintained pending the delay; but, had I known then that Mr. Genest contemplated what he has since consummated, namely, the turning out of the whole teaching staff, there would have been no adjournment without such additional guarantees as would have rendered the present disgraceful and disastrous conditions impossible (par. 8).
>
> Every separate school in Ottawa is closed, 7,000 or 8,000 boys and girls are without the means of obtaining an education, and the vicious and perhaps criminal habits which some of them will inevitably acquire in a life of idleness will probably never be shaken off (par. 9).

Justice Lennox may have been a bit melodramatic about the impact on the students, but he was clear on his disdain for the perpetrators.

> What was done here was the act of Chairman Genest alone. The Board had not the power to delegate their duties or functions to him (par. 14).
>
> They [the board] have not discharged the old teachers, and they have not entertained or deliberated or determined upon the selection or engagement of any teacher or teachers to take their places; and, speaking of the majority, for the plaintiffs are powerless, the Board, by their flagrant neglect to discharge the duties imposed upon them by law, have not only opened the way, but have, unintentionally, invoked the action of the Court. More than this, not only was there no power to delegate, but the resolution purporting to appoint Mr. Genest was vicious and unlawful per se, for its exercise was intended, upon the face of it, to contravene and override the injunction order of the Court should it be issued (par. 15)...
>
> There will be an order directing the trustees to open the schools not later than Wednesday next, and to maintain and keep them open and properly equipped with properly qualified teachers and in all other ways until argument and judgment in this action; to suffer, permit, and facilitate the return of the ousted teachers referred to, to their former positions as teachers-and restraining the Board from interfering with these teachers in the discharge of their duties as such during the time aforesaid (par. 17).

Justice Lennox rendered his decision on November 28 with final wording adjustments on December 17, 1914. The sole question to be determined was whether the rights and privileges guaranteed by section 93(1) of the *Constitution Act* (1867) have been contravened. "There is no other possible argument open to them" (par. 23). Justice Lennox acknowledged that prior to Confederation, in some instances here and there in Ontario, the use of the French language was permitted or not actively opposed. However, "it is not pretended that this right or quasi-right or privilege or indulgence was secured to any class of persons by any law whatever of the then Province of Upper Canada at the Union" (par. 28).

With respect to the actions of the separate board in response to the Regulations, Justice Lennox concluded with limited sympathy:

> However much may be said, and a great deal can be said, in excuse for men who feel as no doubt some of these defendants conscientiously felt, that the use of their mother tongue was being unfairly denied them, the weapons they used, the persistent engagement of unqualified teachers, their attempt to discharge a large body of qualified teachers, to the great prejudice of the schools, their denial of the right of inspection, their unjustifiable treatment of Inspector Summerby…in what amounted to a "declaration of war," by posting their defiance of the Department in the class-rooms to thousands of school children, and finally the arbitrary closing of the schools, are entirely different matters, and do not find ready justification or excuse. It is to be hoped that before long the Board may, recognise the wisdom of resuming the exercise of its functions according to law; but in the meantime, or for so long as my judgment remains unreversed, the injunction…must be continued (par. 34).

The December 17, 1914 amendments to the November decision addressed restraining the defendants or any of their teachers from interfering with inspectors appointed by the Department and reserving to supporters of the separate schools any right they had to bring actions to establish personal liability of any members of the board for loss or damage to the separate schools alleged to have resulted from "the misconduct or default of such members" (par. 42).

The Ottawa separate board did not, as Justice Lennox hoped, recognize the wisdom of resuming its functions according to law and refused to obey the mandatory order, choosing instead to appeal the judgment to the Ontario Supreme Court, Appellate Division. The appellate court unanimously dismissed the appeal in its judgment of July 12, 1915. The appellants attacked the validity of Regulation 17 on two grounds: (1) that it is *ultra vires* the Department of Education; and (2) that, if authorized by provincial legislation, the legislation itself is *ultra vires* pursuant to section 93 (1) of the

Constitution Act (1867). Chief Justice Meredith stated that the first objection was no longer open to the appellants because of the declaratory *Act* passed at the last session of the Ontario Legislature.

When the Ottawa separate board failed to open its schools in September 1914, the Legislature passed *An Act respecting the Board of Trustees of the Roman Catholic Separate Schools of the City of Ottawa* (1915) to make provision for the schooling of the children affected by the controversy, pending a solution to the difficulty (Fenske, 1968). The next case will address more specifically the implementation of this *Act*. However, with respect to the appellant's first objection to the Regulations, this *Act* contained the following in section 1, as referenced by the Chief Justice:

> 1. It is hereby declared that, subject to the said question of the legislative authority of the Province under the British North America Act, the said regulations were duly made and approved under the authority of the Department of Education Act and became binding according to their terms and provisions upon the said Board and the schools under its control.

Regarding the second objection, Chief Justice Meredith made reference to "*An Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools* (1863) as the referent legislation protected by section 93 of the *British North America Act* (1867). The Chief Justice stated that "the rights and privileges of the Roman Catholics of the Province with respect to Separate Schools were those, and in my opinion those only, which they possessed under the Act of 1863" (par. 18). The *Act* (1863) supported religious differences but not linguistic differences.

> I am unable to find anything which supports the contention of the learned counsel for the appellants that the right to use the French language in the Separate Schools of the Province was guaranteed by treaty or otherwise to the French-speaking people, nor am I able to appreciate the contention that that is a natural right pertaining to them which the Legislature is powerless to impair or destroy (par. 24).

Despite the unanimity of the decision of the Justices, Justice Garrow could not restrain himself from adding some insights of his own:

> These questions of language, like questions of religion, are always delicate to handle. Susceptibilities as to them are keen. Temper is easily aroused, and reason and logic too often are left far behind. It is perfectly natural thing that those of French descent should love their noble language, and even passionately desire to promote, as far as reasonably possible, its perpetuation here. One may

> even respect a similar sentiment on the part of the Germans, the Italians, and the others settled among us to whom the English is a foreign tongue. But it is not to be ignored or forgotten that, while all are tolerated, the official language of this Province, as of the Empire, is English, and that the official use of any other language is in the nature of a concession and not of a right (par. 35).

It must have indeed been a bitter potion that 150 years after French North America became part of British North America, there was no inherent right for the French to their language. They were expected to take comfort that their language was graciously "tolerated" within the British Empire.

Chairman Genest and his determined board majority remained unconvinced and next appealed their case directly to the Judicial Committee of the Privy Council in London, where they faired no better. The judgment of their Lordships, given on November 2, 1916, upheld the decision of the Ontario appellant court. The Lord Chancellor, Viscount Haldane, stated that Roman Catholics together form a class of persons within the meaning of section 93 and that class cannot be subdivided into other classes by languages within that faith.

> …their Lordships are of the opinion that, on the construction of the Acts and documents before them, the regulations impeached were duly made and approved under the authority of the Department of Education, and became binding according to the terms of those provisions on the appellants and the schools under their control, and they will humbly advise His Majesty to dismiss this appeal (par. 27).

One might be forgiven for assuming that when a case has been before the Judicial Committee of the Privy Council, the matter is concluded. However, in the *Mackell Case*, there was another chapter. It seems that Chairman Genest and his fellow board majority trustees paid no more heed to the wisdom of the Privy Council than they had to the lower courts. On May 11, 1917, Mr. Mackell and his original group of plaintiffs launched a motion asking for an order from the Ontario Supreme Court, High Court Division:

> …that Samuel M. Genest, chairman of the defendant board, may be committed to the common gaol of the county in which he may be found, for breach of the injunction granted by the judgment of the Honourable Mr. Justice Lennox after the trial of this action, dated the 17th day of December, 1914, restraining the defendant from continuing in its employ or paying the salaries, wages, or other remuneration for their services, of teachers who do not possess the proper legal qualifications or who are not authorised to teach pursuant to the provisions of the Separate Schools Act or the regulations of the Department of Education of the

> Province of Ontario, as well as the salaries, wages, or other remuneration for their services, of teachers who refuse or neglect to conform to the said regulations or who in any manner contravene the said regulations…(par. 5).

The court issued a subpoena on May 14, 1917, requiring Samuel M. Genest, J. Albert Foisy, and Albert Carle, trustees for the defendant board, to appear for examination before one John Bishop, Esquire, a special examiner at Ottawa. On the same date, the court also issued similar subpoenas for three teachers in the separate schools requiring them to also meet with Mr. Bishop: Honore Mailly (Brother Theophilus), Theophile Sarlit (Brother Osias), and Joseph Dsaulniers (Brother Francis).

When the examinations occurred, the subpoenaed witnesses refused to answer material questions. In particular, Samuel Genest, Albert Carle, and Honore Mailly (Brother Theophilus) refused to produce pay sheets, minute books, books of account, and documents of the defendant board. When asked if any moneys of the board were used to pay any teachers who lacked proper teaching qualifications or a valid teaching certificate, Chairman Genest declined to answer on the ground that it might incriminate him or the defendant board. The three Reverend Brothers respectively admitted that they had been teaching without having any legal certificate or authorization, but when asked if they had been paid any salary for teaching in Ottawa separate schools since December 1914, they each declined to answer. When asked on cross examination by counsel for the defendants for his reason for declining to answer, Brother Osias responded, "Well, I think I declined in the interests of the schools and children" (par. 29). Brother Osias also stated that "I have made perpetual vows to devote myself to the welfare of the children and to my own sanctification" (par. 29) and that such was his paramount duty over any other obligation. When asked if he considered that answering the questions either wouldn't or might not serve the interests of the children, Brother Osias answered "Yes" (par. 29). The other two Reverend Brothers took similar positions.

On August 1, 1917, Justice Sutherland was unable to see how the defendant board could be proceeded against criminally based on answers given by the witnesses, nor could the statement of one member of the board, made on examination in a civil action, be used against another in a criminal action. Neither did Justice Sutherland appreciate that the answers of the Reverend Brothers constituted a valid or legal reason for refusing to answer the questions. Justice Sutherland issued an order that Chairman Genest and the three Reverend Brothers attend again to be examined, answer the question which they previously refused to answer and other proper questions, "and in default that each of them be committed to the common gaol of the county in which they may be found" (par. 31).

The Ottawa Commission Case (1917): *Ottawa Separate School Trustees v. City of Ottawa and Quebec Bank, [1915] 34 O.L.R. 624, Ontario Supreme Court, High Court Division; [1916] 36 O.L.R. 485, Ontario Supreme Court, Appellate Division; [1917] A.C. 76, Judicial Committee of the Privy Council; [1918] 41 O.L.R. 259, Ontario Supreme Court, Appellate Division.*

As referenced in the *Mackell Case*, when the Roman Catholic Separate Board in Ottawa failed to open its schools in September 1914, the Ontario Legislature passed *An Act respecting the Board of Trustees of the Roman Catholic Separate Schools of the City of Ottawa* (1915). This *Act* was intended to provide for the schooling of the children impacted by the extended season of discord pending a resolution of the difficulties. Chief Justice Meredith of the appellate court in the *Mackell Case* recognized the declaratory authority of this *Act* respecting Regulation 17. Section 3 of the *Act* then provided the Minister of Education with the power, subject to the approval of the Lieutenant Governor in Council, to replace the Separate Board with a Commission of three to seven persons. Such action could be taken if, in the opinion of the Minister, the Board failed to comply with the provisions of the *Act*, specifically, Regulation 17. The *Act* was assented to on April 8, 1915. Acting under authority of an Order in Council dated July 20, 1915, the appointed Commission began to exercise the rights of the Board on July 23, 1915 (Fenske, 1968).

On July 28, 1915, the Board of Trustees of the Roman Catholic Separate Schools for the City of Ottawa and five named separate school supporters began an action in Ontario Supreme Court, High Court Division, to recover control of the separate schools in Ottawa. This was a joint action against two parties. In the first action, the plaintiffs sought an injunction against the Corporation of the City of Ottawa to prevent the city fathers from transferring any property tax revenues from supporters of Roman Catholic Separate Schools to the defendant Ottawa Separate School Commission. The second action sought an injunction preventing the Quebec Bank from transferring to the Commission any moneys which were on deposit in the name of the Board as of the date the Commission was appointed, July 23, 1915.

Chief Justice Meredith tried these actions without a jury at Ottawa on October 30 and rendered his decision on November 18, 1915. The plaintiffs argued that the action prejudicially affected the right of the separate school supporters under Section 93(1) of the *Constitution Act* (1867). However, the Chief Justice concluded that "they have given no evidence of any such prejudicial effect… without which the power of the Legislature to enact such legislation is unrestrained (par. 8, 10). Chief Justice Meredith offered this further enlightening elaboration:

> The rocks upon which it was said that the Ottawa Separate Schools came near to foundering are said to be: the appointment of an inspector who was not a Roman Catholic, and an overruling of the Board's desires as to the language to be used in teaching. Whether these things were necessary or unnecessary, gracious or ungracious, is a matter that does not in any way affect the legal question involved in these actions…That these things were not unlawful, the main purpose of public schools, and the very words of the Separate Schools Act…seem to me to make very plain; and, beside that, the judgment of the highest court of this province has decreed that they were lawful: Mackell v. Ottawa Separate School Trustees, 34 O.L.R. 335 (par. 26).
>
> The removal of trustees who fail or refuse to perform the duties of their office, and especially so when they do so contumaciously, is but a familiar, appropriate, and sometimes necessary legal method; and for a High Court of Parliament, Provincial or Federal, to remove trustees filling a public office, even though elected to that office, and the more so if elected with a view to continuing to refuse or fail to perform such duties in the face of a judgment of a Court of competent jurisdiction, making those duties plain, could not be an infringement upon any legal right, but must be an endeavour to maintain and enforce it; and the mere fact that an appeal may be taken or is contemplated, against such judgment, is no kind of excuse for disregarding it…the only legal and proper course, especially for a public officer, is to yield obedience to that judgment until it is reversed, if ever it should be; and that the plaintiffs should have done, and in doing would have remained in office (par. 27).

The separate trustees and supporters next appealed to the Ontario Supreme Court, Appellate Division. Those appeals were heard on March 20, 1916, and on April 3, Chief Justice Meredith once again rendered the decision, and again a unanimous decision on behalf of the appellate court. The appeal was dismissed. The Chief Justice found that the

Act in question did not offend section 93(1) but rather only suspended the right of a particular body of persons because is persistently refused to obey the law.

> The right or privilege which the Act of 1863 conferred upon Roman Catholics and the persons chosen by them to carry on and manage their schools was not to manage and conduct them according to their own will and pleasure, but only to do so in accordance with the law and the regulations; and, in my opinion, a body of Roman Catholics which is managing and conducting its schools as the appellants were doing, and insisted upon doing, is not exercising any right or privilege which sec. 93(1) was intended to preserve; and it would be, in my judgment, an extraordinary thing if the Legislature were powerless to intervene and to put an end to the state of things which existed and was the moving cause for the enactment of the legislation in question (par. 39).

The separate trustees and supporters next appealed to the Judicial Committee of the Privy Council in London. The judgment of their Lordships was given on November 2, 1916, the same day they rendered their decision in the *Mackell Case*. In this instance, the outcome took a new direction. The appeal was upheld and the legislation in question was declared *ultra vires*.

> The court held that although the Board's actions may result in Roman Catholic parents effectively losing their privileges to have their children attend separate schools, the provision authorizing the minister to replace a separate board with an appointed commissioner for an indefinite period of time interfered with the right of "electing trustees for the management of a separate school for Roman Catholics," set out in section 2 of the *Separate Schools Act, 1863* (Maybank, 1998: 331).

The Lord Chancellor, Viscount Haldane, had this to say:

> The case before their Lordships is not that of a mere interference with a right or privilege, but of a provision which enables it to be withdrawn *in toto* for an indefinite time…To give authority to withdraw a right or privilege under these conditions necessarily operates to the prejudice of the class of person affected by the withdrawal (par. 5)…
>
> …if the appellant Board and their supporters fail to observe the duties incident to the rights and privileges created in their favour, the result is that the children of Roman Catholic parents are under obligation to attend the common schools, and thus lose the privileges intended to be reserved in their favour under provision (1) of sec. 93 of the B.N.A. Act, 1867 (par. 6)…
>
> Their Lordships do not anticipate that the appellants will fail to obey the law now that it has been finally determined. They cannot, however, assent to the proposition that the appellant Board are not liable to process if they refuse to

> perform their statutory obligations, or that in this respect they are in a different position from other Boards or bodies of trustees entrusted with the performance of public duties which they fail or decline to perform (par. 7).

The appointed Commission returned the separate schools to the Ottawa Separate School Board immediately after the decision of the Privy Council was announced (Fenske, 1968). However, the Legislature of Ontario passed two consequential Acts. The first, an *Act respecting the Appointment of a Commission for the Ottawa Separate Schools* (1917), Chapter 59, provided for temporarily interfering with a privilege, but not withdrawing the privilege, if the Ottawa Separate Board failed to comply with the Regulations of the Province. The second Act, an *Act respecting the Roman Catholic Separate Schools of the City of Ottawa* (1917), Chapter 60, gave sanction to the expenditures made by the Commission while it was responsible for the separate schools. The Lieutenant Governor in Council submitted the first Act, Chapter 59, to the Ontario Supreme Court, Appellate Division, for a ruling. The judgment was delivered on December 17, 1917, and declared Chapter 59 to be *intra vires*. This ruling was not challenged by the Ottawa Separate School Board (Fenske, 1968).

The Ottawa Bank Case (1920): *Ottawa Separate School Trustees v. Quebec Bank, [1917] 39 O.L.R. 118, Ontario Supreme Court, High Court Division; [1918] 41 O.L.R. 594, Ontario Supreme Court, High Court Division; [1918] 43 O.L.R. 637, Ontario Supreme Court, Appellate Division; [1920] 50 D.L.R. 189, Judicial Committee of the Privy Council.*

Following the decision of the Judicial Committee of the Privy Council in London on November 16, 1916, that the *Act* of the Ontario Legislature appointing a Commission to manage the Ottawa separate schools in place of the elected trustees was *ultra vires* and invalid, the Ottawa separate board of trustees launched three new separate actions. The first was against the Quebec Bank to recover funds which were on deposit to the credit of the separate board at the time the Commission assumed the rights of the Board on July 23, 1915. The second was against the Bank of Ottawa to recover funds deposited during the year 1916, being the property of the plaintiffs. The third was against the named members of the Commission for recovery of board funds. On March 19, 1917, Justice Middleton held that the three actions should be tried as one consolidated action. Justice

Middleton also granted the request of the Attorney General of Ontario as well as separate trustee, R. Mackell, and some separate school electors to intervene in the litigation by adding them as defendants, against the expressed will of the plaintiff.

The resulting consolidated statement of claim sought to recover from the Quebec Bank the $97,331.34 on deposit to the credit of the separate board at the time the Commission assumed the Board's rights and subsequently disbursed under the direction of the Ottawa Separate School Commission. Also claimed from the Bank of Ottawa was the $37,627.02, which had been transferred from the funds deposited with the Quebec Bank and remained on account to the credit of the Commission. The Bank of Ottawa, by way of counterclaim, sought to recover $71,891.16, which had been borrowed by the Commission and remained owing. The plaintiff Board also sought to recover from the three individual Commission members, Dennis Murphy, Thomas D'Arcy McGee, and Arthur Charbonneau, the sum of $84,955.50 procured by the Commission from the City of Ottawa, representing one-half of the annual separate school property tax levy. The defendants stated that all funds accessed, except the amount remaining on deposit with the Bank of Ottawa, "were wholly disbursed and expended in maintaining and carrying on the said schools" (par. 10).

Justice Clute delivered his trial decision on January 14, 1918. Justice Clute considered the two *Statutes of Ontario* (1917) passed subsequent to the November 2, 1916, decision of the Privy Council. Chapter 59 provided for temporarily interfering with a minority school privilege but not withdrawing the privilege, and Chapter 60, sanctioned the expenditures made by the Commission while it was responsible for the separate schools. The defendants argued that, in as much as the Appellate Court had found Chapter 59 *intra vires*, Chapter 60 should be considered *intra vires* as well. If the Legislature could deal with the issue to such a limited extent, "it can deal just as effectively by subsequent legislation" (par. 63). Justice Clute said:

> I am unable to take this view. On the contrary, I am of the opinion that, inasmuch as what was done by the Commission was done under an authority which has been declared to be ultra vires, it was therefore something wholly illegal and without authority of any kind, and itself ultra vires…(par. 64).

Justice Clute acknowledged that some expenditures, even though not authorized and illegal, were appropriate in tempering his decision:

> It is only natural justice, I think, that the expenditures incurred in the payment of the teachers formerly employed and continued by the Board and of the expenses of management and control, having been actually paid out of the fund properly applicable to that use, ought not be recovered back; and I, therefore, have limited the amount sought to be recovered by deducting this expenditure from the funds received by the Commission of the Board's money (par. 93).

There was a judgment against the members of the Commission still living and the executors of Dennis Murphy, who died subsequent to the commencement of the action, for the two sums of $97,331.34 and $84,955.50, subject to a credit of $37,627.02 when the Bank of Ottawa would transfer that amount to the plaintiff Board. The plaintiff also received a judgment against the Quebec Bank for the $97,331.34 less the credit of $37,627.02.

> This indebtedness is also subject to be reduced by the amount of payments made to teachers, and in the management of the schools as already mentioned … In case the parties cannot agree as to the balance to which the plaintiffs are entitled after due allowance for expenditures made and to be deducted as aforesaid, there should be a reference to the Master at Ottawa to ascertain and settle the amount…(par. 94).

With respect to the counterclaim by the Bank of Ottawa for the amount of $71,891.16 loaned to the Commission, Justice Clute took the view that the expenditure was made without authority or legal right, since the *Act* that purported to authorize indemnity is *ultra vires*, and dismissed the counterclaim. This left Commission members Thomas D'Arcy McGee, Arthur Charbonneau, and the estate of Dennis Murphy on the hook for a potentially significant amount of the funds expended on behalf of the Ottawa separate schools, including the indebtedness to the Bank of Ottawa. This represented a poor reward for having answered the Province of Ontario's call to serve.

Not surprisingly, the defendants chose to appeal Justice Clute's decision to the Appellate Division of the Ontario Supreme Court. On October 24, 1918, Chief Justice Meredith once again delivered the unanimous decision, allowing the appeal and reversing the decision of the lower court. The Chief Justice stated that the legislation in question, Chapter 60, did not violate section 93 of the *British North America Act* (1867) and was therefore valid. The school board, in conducting the schools "in contravention and defiance of the law" (par. 33), made it necessary for the Legislature to place the schools under the Commission "in order to secure for the children of the supporters of separate schools in Ottawa the education to which they were by law entitled" (par. 33). The Commissioners had assumed their duties in good faith, carried on the schools and expended the funds in question for that purpose only. An audit had confirmed that the accounts were correct.

> ...what is argued is that, because the commission, as it has been held, had no legal existence, the supporters of the schools are entitled, though they have enjoyed the benefit of that expenditure, to say that it was improperly made and that the Commissioners must pay the money out of their pockets, with the result that the schools will have been carried on while the Commission was in charge of them, free of expense to the supporters of the schools, and that the commissioners must pay over to the School Board what will probably suffice to carry them on for a further period of a year or more (par.33).
>
> It cannot, I think, be that the Legislature is powerless to prevent such a wrong from being perpetrated...(par. 34).

Chief Justice Meredith allowed the appeals of the defendant, reversing the judgment of Justice Clute, and entered a judgment for the Bank of Ottawa on their counterclaim.

> If I had reached a different conclusion as to the validity of the Act, I should nevertheless, for the reasons I have given, have been of opinion that the Commissioners are entitled to be recouped the money they have expended in carrying on the schools, and the result would be the same (par. 41).

The Appellate Court's decision is a particularly strong one. Not only did it reverse the decision of the lower court and find the *Statutes of Ontario* (1917), Chapter 60, to be *intra vires*, but Chief Justice Meredith stated that, even if a different decision had been reached on the constitutionality of Chapter 60, the Commissioners would still be entitled to recoup the money they expended on behalf of the schools. The result of the Court's deliberations would be no different. Unlike the decision from Justice Clute, here we have from Chief Justice Meredith reassurance that citizens of good faith who answer their government's call, will not and should not be left suffering the consequences, even if the actions of the government were inappropriate.

Clear and decisive though the Appellant Court may have been, Chairman Genest and his Ottawa Separate School Board went forth bravely a third time to London with their appeal to the Judicial Committee of the Privy Council. The appeal was heard on July 28 and 29, 1919, and their Lordships delivered their judgment on October 23, 1919:

> The present case is what it is to be hoped is the last chapter of the history of the unfortunate disagreement between the Board of the Roman Catholic Schools and the educational authority of the City of Ottawa (par. 1)...
>
> Their Lordships...agree with the unanimous judgement of the Supreme Court that the statute is not *ultra vires* and that the actions fall to be dismissed. They fail to see that the right of the appellants has been in any way prejudicially affected by the statute. The only way in which they were prejudicially affected was by the action of the former statute, which extruded them from the management of the schools. Had they been left in management they would necessarily have spent this very money for the same purposes. It cannot be said to create a prejudice to affirm that the money was rightly spent for the purposes for what it was destined (par. 9).

Postscript to the Mackell Case and the two Ottawa Cases

Once again, the Ottawa Separate School Board did not agree with their Lordships that they had concluded the last chapter of an unfortunate disagreement. The separate board continued its refusal to comply with Regulation 17 until 1927, a full 15 years after the Regulation was first introduced in June of 1912. However, the Minister of Education made no further attempt under the *Statutes of Ontario* (1917), Chapter 59, to temporarily interfere with the Separate Board's right to govern itself. Instead, the provincial government found a less painful way to convince the errant separate board to mend its ways. All provincial grants were withheld from the separate board, grants to which the board would have been entitled if it had complied with the Regulation. "In 1927 arrangements were worked out to care for the issue involved" (Fenske, 1968: p. 133).

Clearly this was a disagreement of profound dimensions between French speaking Catholics and English speaking Catholics. It is also interesting to take a second look at the surnames of some of the players in this drama. We read Genest, Foisy, and Carle as the three recalcitrant separate trustees while on the other side we have trustee Mackell as well as Murphy and McGee who were appointed Commission members. Acknowledging that the third member of the Commission did carry the francophone name Charbonneau, this researcher did, nonetheless, harbour the fleeting thought that this may also have been a contest between French Catholics and Irish Catholics. Though bound together by their common Roman Catholic faith, it was insufficient to allow them to resolve this issue within their own community. Their culture, heritage, and language remained diverse.

Over this issue, their tribal loyalties appeared to provide a greater intensity of unity than their common religious faith.

> At the outset, during the eighties and nineties, the main conflict was religious; the Protestants…feared a Catholic takeover of their country, and the Catholics, in spite of their ethnic difference, stuck together in order to ward off the attacks of the Protestants. ...The issue which was allegedly a religious conflict at its inception, slowly transformed itself in the three decades between 1883 and 1913 into an explicitly ethnic, linguistic and cultural conflict, and the Roman Catholics who had resisted the Orangemen's sallies in unison during the eighties and nineties, became progressively more divided along linguistic and cultural lines. By 1910 the latter issue took precedence over the Protestant-Catholic quarrel. Bishops, clergy and faithful began to line up according to their ethnic affiliation and to see their principal opponents as either Irish or French-Canadian Catholics, and by the same token the Protestant "enemy" receded into the background. …In a rather intriguing "about-face," in the second decade of the twentieth century, the Irish Catholics of Ontario were defending the same cause as their traditional enemies the Orange Lodges, against the French Catholics, their erstwhile allies (Choquette, 1972: p. 35).

Key Findings

This set of judicial decisions has provided the following key findings that have relevance for the separate school system in Alberta today. They help us understand the scope of decision making power of the provincial government with respect to its responsibility to Alberta's separate schools.

1. *Section 17 of the* Alberta Act*, which made the separate school rights protected by section 93 of the* Constitution Act *(1867) applicable to Alberta, was within the proper legislative authority of the Parliament of Canada. Parliament had the authority to define, in section 17 of the* Alberta Act*, the manner in which section 93 of the* Constitution Act *(1867) would apply to Alberta (*Alberta Act*).*
2. *Separate school rights and privileges protected by section 93 of the* Constitution Act *(1867) are those that existed in law at the time the province joined Confederation and does not include those that existed in practice only (Mackell).*
3. *The language of instruction used in schools, both public and separate, is subject to the approval and direction of the provincial government, except as guaranteed under section 23 of the* Charter of Rights and Freedoms*, the* Constitution Act *(1982) (Mackell).*

4. *A separate school board of trustees is not empowered to close its schools to students in protest of a provincial government or judicial court directive (Mackell, Ottawa Commission).*
5. *The provincial government is within its legal authority to replace a separate board of trustees with an appointed trustee(s) for failure of the separate board to perform the duties of their office in accordance with the law and regulation, but only for a reasonable and specified time period. Such a removal from office cannot be for an indefinite period (Ottawa Commission).*
6. *Trustees appointed by the provincial government to replace an elected separate board of trustees are not personally liable for the expenditure of board funds properly made in good faith by them on the regular operation and management of the board's schools. This is true even if the courts were to subsequently find that the provincial government's appointment of the trustees was somehow inappropriate (Ottawa Bank).*

CHAPTER FOUR

ISSUES OF GOVERNANCE: PRESCRIBING GRADE LEVELS *and* CURRICULUM

Introduction

In continuing the review of governance issues related to separate schools, the Supreme Court of Canada has yet more to say regarding the actual program offering to students. In the previous chapter, the ability of the province to prescribe the language of instruction was considered. In this chapter, the Province of Ontario again provides the exemplars on the ability of the province to determine the number of grade levels to be offered to separate school students followed by a visitation to the Province of Quebec to consider the province's ability to prescribe curriculum for separate schools. Then in the next chapter, a province's ability to alter the geographic boundaries of a separate school jurisdiction and to question its legal right to exist will be considered.

Prescribing Grade Levels *and* Curriculum

Between 1915 and 1928, an evolving issue played out in the Province of Ontario concerning the province's ability to determine the grade levels to be offered in separate schools. In essence, separate school jurisdictions were prohibited by regulation from offering high school programs and accordingly received no funding from the province for the purpose. Proper determination of the question was based on interpretation of precedent legislation existing in the Province of Ontario at the time of Confederation. The Judicial Committee of the Privy Council in London sided with the Province preserving the status quo. Six decades later the Supreme Court of Canada would revisit that decision and express a different opinion. Shortly thereafter, when the Province of Quebec attempted to prescribe a standardized curriculum for all schools in that province, the Supreme Court appeared to contradict its recent opinion for the Province of Ontario. At issue was the ability of a province to use its regulatory power to control its pedagogical system either by controlling the grade levels to be taught or by controlling the curriculum to be taught. Once again, interpretation of precedent legislation existing in Ontario and Quebec at the time of Confederation was the determining factor. The following three cases tell that story.

The Tiny Case (1928): *Tiny (Township) Roman Catholic Separate Sect. No. 2 v. the King, [1927] S.C.R. 637, Supreme Court of Canada; [1928] A.C. 363, Judicial Committee of the Privy Council.*

For the Province of Ontario, the referent legislation for separate schools in place at the time of confederation and protected by section 93 of the *Constitution Act* (1867) is known as the *Separate Schools Act* (1863). Fully titled *An Act to restore to the Roman Catholics in Upper Canada certain rights in respect to Separate Schools* (1863), it is also often referred to as the *Scott Act* (1863) named for Richard W. Scott, the Conservative Member of the Legislative Assembly of Canada for Ottawa who introduced the bill (Dixon, 1976). The preamble of the *Act* of 1863 states as its purpose:

> to restore to Roman Catholics in Upper Canada certain rights which they formerly enjoyed in respect to Separate Schools and to bring the provisions of the Law respecting Separate Schools more in harmony with the provision of the Law respecting Common Schools.

Prior to separate schools acquiring their own distinct act in 1863, they were governed, like public schools, by the parliamentary legislation known as the *Common Schools Act*, the latest incarnation being the *Act* of 1859, fully titled *The Upper Canada Common School Act* (1859). Common schools, both public and separate, offered:

> a basic elementary program to prepare the child of the ordinary citizen for life, for an occupation in business or agriculture or for Normal School. They were organized in classes, with two years to a class, with the total program reaching at least the fourth class and sometimes a fifth or, rarely, a sixth class. It was mandatory for each freeholder to support by taxes either his local public or separate school. The provincial government added to this support with a Common School Fund distributed to both types of schools on the basis of attendance (Dixon, 1976: p. 29).

The Council of Public Instruction governed both public and separate common schools in Upper Canada. Section 26 of the *Separate Schools Act* (1863) declared separate schools to be “subject to such regulations, as may be imposed, from time to time, by the Council of Public Instruction for Upper Canada.”

There was also something called grammar schools, which were not considered part of the governmental education system. They were somewhat elitist, provided a narrow classical education at both the elementary and secondary level for boys only. They received some government support through the grammar school fund but were not tax supported, charged tuition and were often inaccessible. There were no separate grammar schools, although there were private Catholic high schools in some cities, some of which received government funding similar to the grammar school fund prior to Confederation but were totally dependent on tuition, donations, and the church after Confederation.

In 1871, the provincial legislature passed *An Act to improve the Common and Grammar Schools of the Province of Ontario*. In essence, this *Act* (1871) provided that common schools were to be called public schools and grammar schools were to become public high schools that could continue to offer classical elementary programs but had the same admission standards as the first four classes of the public schools [girls could attend]. The *Act* (1871) made no provision for separate high schools, yet there was no Catholic protest. Separate schools were able to extend their programs to the fifth class (grade ten) in areas not close to public high schools and the private Catholic high schools were available in the cities for those who could afford the tuition and were going on to university. In reality, common school limitations were not greatly noticed since an elementary education through class four (grade eight) was often considered sufficient for the times, particularly in rural society.

> Vicar General Rooney, chairman of the Toronto separate school board in the 1880's, was so unconcerned about the 1871 Act that he wondered whether a high-school education for the average son of a farmer or labourer might not be dangerously raising the child's expectations for life (Dixon, 1976: p. 51).

In the Province of Ontario of the early twentieth century, there were four types of schools governed by Boards of Trustees and funded by both local property taxation and provincial grants. First, there were non-denominational public schools for students in grades one to eight. Second, there were separate schools that were public schools usually serving Roman Catholics but occasionally Protestants, also for students in grades one to eight. Third were high schools or collegiate institutes offering non-denominational, secondary programs for grades nine through thirteen. Collegiate institutes were high schools that met provincial regulations for a prescribed number of teachers and students. Finally, there were continuation schools with the fifth class (to grade ten) that were both public and separate schools operating programs beyond grade eight, with provincial sanction, in rural areas relatively inaccessible to a high school.

By 1915, provincial officials were concerned with the number of separate continuation schools beyond the fourth class which were operating where there were now public high schools, some separate schools were offering continuation classes without provincial sanction, some extending even into the sixth class. In October 1915, the Deputy Minister of Education sent directives to certain bishops advising them that they could not do work beyond the fifth class or use property taxes for such purpose and warned that next year, separate school students would not be admitted to entrance examinations for Normal School or to the matriculation examination. In November 1915, the Minister of Education sent a letter to the Bishop of Peterborough noting:

> that there was a "well-defined, clear cut and well understood line of demarcation between the work of our public and separate school and that of our…high school." This would prevent "the erratic condition" of separate schools operating fifth and sixth classes (Dixon, 1976: p. 67).

In 1920, the Catholic Bishops of Ontario submitted the last of a series of briefs to the provincial government, before resorting to judicial process, requesting that separate school supporters be freed from property taxation for public secondary schools and receive provincial grants for secondary schools. In December 1921, the bishops reminded newly elected Premier E. C. Drury that they were still waiting for an answer. In May 1922, Premier Drury proposed that the bishops' intention to go to the courts receive government financial backing in order to settle the matter. The Premier declared his intention that the case should go all the way to the Privy Council in London.

In December 1925 and January 1926, Justice Rose of the Ontario Supreme Court, High Court Division, heard arguments on the Petition of Right submitted by the Board of Trustees of the Roman Catholic Separate Schools for Section No. 2 in the Township of Tiny on behalf of all other separate boards of trustees in the Province of Ontario. The petitioners claimed what they asserted was their right at Confederation: (1) the right to operate Roman Catholic high schools, (2) the right of Roman Catholics in Ontario to exemption from property taxation for the support of continuation schools, collegiate institutes and high schools not conducted by their own boards of trustees, and (3) a share in provincial moneys for common school purposes computed as they asserted was their statutory rights at the time of Confederation. The petitioners stated:

> …the fact is such courses of study and grades were established and conducted by certain boards of trustees of the Roman Catholic separate schools from in or about the year 1841 up to and including the year 1915 when certain regulations were enacted by the respondent under which the respondent claimed and still claims the right to limit the range and grade of the courses of study and grades of education…(par. 20[15]).

The petition requested a declaration that certain Ontario statutory enactments prejudicially affected their rights as granted by the *Separate Schools Act* (1863) and were *ultra vires*.

On May 13, 1926, Justice Rose dismissed the entire petition. On June 8, 1926, a Notice of Appeal was filed with the Appellate Division of the Supreme Court of Ontario. Leave was given to add the separate school board for the City of Peterborough to the board of Tiny separate district as petitioners on behalf of all separate boards in Ontario. The appeal was heard in October and the appellate court's decision was delivered on December 23, 1926. The five justices unanimously dismissed the appeal. The Supreme Court of Canada heard the case in April 1927 and provided its decision on October 10, 1927. Of the six judges hearing the appeal, three held in favour of the appellants and three held that the appeal should be dismissed. The split decision meant that the appeal was dismissed.

Chief Justice Anglin first gave the argument in favour of the appeal. He began by defining the cultural difference between common (public) schools and separate schools:

> Common and separate schools are based on fundamentally different conception of education. Undenominational schools are based on the idea that the separation of secular from religious education is advantageous. Supporters of denominational schools, on the other hand, maintain that religious instruction and influence should always accompany secular training (par. 29)…
>
> Catholics deem it of vital importance that denominational influence over, and instruction of, their children should continue during the period of their secondary education (par. 30).

The Chief Justice next stressed that under section 7 of the *Separate Schools Act* (1863) trustees of Catholic separate schools had "all the powers in respect of separate schools that the Trustees of Common Schools have and possess, under the provisions of the Act relating to Common Schools" and that under section 9 of the *Separate Schools Act* (1863) they were required to "perform the same duties and be subject to the same penalties as the Trustees of Common Schools." The Chief Justice referenced the preamble of the *Act* (1863) that stated its purpose was to bring the law respecting separate schools more in harmony with the provisions of the law respecting common schools. He then stated:

> It is, therefore, abundantly clear that, if in 1867, trustees of common schools in Upper Canada had, by law, the right to provide in their schools for the secondary education now in question, Catholic trustees had, in the management of their separate schools the same legal right (par. 36).
>
> Turning to the Common Schools Act in force in 1867 (C.S.U.C., 1859, c. 64), we find that it contains no limitation upon the scope of the education to be imparted or upon the courses of study to be conducted in the common schools (par. 37)…
>
> It was a statutory duty in 1867 to provide in all common schools education suitable for pupils ranging from 5 to 21 years of age and of both sexes (par. 56).

Chief Justice Anglin provided the following, which is at least mildly inflammatory:

> …that an emasculation of the courses of study which Catholic separate school trustees were at the Union entitled to provide in their denominational schools for pupils up to 21 years of age would prejudicially affect a right or privilege with respect to such schools legally enjoyed by them is indisputable; and it would also affect the privilege of denominational teaching in separate schools, because parents desirous of having their children receive such training in those schools up to the age of 21 years would be obliged to submit to the hardship of their obtaining only an inferior secular education. Legislation purporting to authorize such an injustice would contravene s. 93(1) of the British North America Act; and it is obvious that what the legislature cannot do by direct action its creature may not do by regulation (par. 73).

Justice Mignault resorted to logic when he had this to add in support of the appellant petitioners:

> It seems to me inconceivable that when it granted to the Roman Catholics of Upper Canada the privilege of having their own separate schools, the Legislature could have intended to render this privilege valueless by allowing the Council of Public Instruction of that Province to restrict, by regulations, the scope of the education to be given in these schools. The educational systems both of Ontario and Quebec were established by the same Legislature, and it is a matter of

> common knowledge that in Quebec the religious minority of that province has always had full control of its own schools, including its high schools (par. 173).

Justice Duff articulated the position that defeated the appellants. He did not agree with the Chief Justice Anglin that common (public) schools could provide high school programs and therefore so could the separate schools, nor did he accept the logic of Justice Mignault.

> …denominational schools…were entitled to establish schools of the class known as "common schools", to manage them by boards of trustees nominated by themselves but with respect…to the courses of study to be followed, it was their duty to proceed in obedience to such regulations as might be promulgated by the central education authority of the province, the Council of Public Instruction (par. 105)…
>
> The appellants, in order to succeed, must establish that the legislation on the subject of common schools contemplated schools of the advanced character mentioned, and they must also establish that, in the conduct of such schools, boards of trustees were…independent of the regulative authority of the Council of Public Instruction (par. 108).

Justice Duff noted that under section 26 of the *Separate Schools Act* (1863), separate schools were "subject to such regulations, as may be imposed, from time to time, by the Council of Public Instruction" and that under section 7 of the *Act* (1863) separate school trustees are to have the same powers as trustees of common schools.

> …there is nothing in s. 7 of the Separate Schools Act, which can properly be read as endowing the board of trustees of such schools with authority to ignore, in the exercise of their powers, the limits necessarily imposed, by the terms in which such powers are defined in the Common Schools Act (par. 125).

Section 119, subsection (4), of the *Common Schools Act* (1859) stated that it shall be the duty of the Council of Public Instruction:

> 4. To make such regulations from time to time, as it deems expedient, for the organization, government and discipline of Common Schools, for the classification of Schools and Teachers, and for School Libraries throughout Upper Canada.

The intention to subordinate boards of trustees to the Council in matters over which the Council had regulatory power was clearly declared by section 79, subsection (16) of the *Act* (1859), which directed boards of trustees to see that the schools under their care are "conducted according to the authorized regulations." Justice Duff stated that:

> The appellants have not, I conclude, established their contention as to the autonomous jurisdictions of boards of trustees, and they fail equally, I think, in adducing satisfactory reasons for holding that, in scope of instruction, the common schools of 1867 were on the same footing as collegiate institutes, high schools or continuation schools to-day (par. 146).

Justice Lamont added his take on why the appellants failed in their quest.

> …in my opinion, in so far as secular education was concerned the separate schools were intended to be simply common schools under denominational management (par. 221).
>
> The right of the Roman Catholics, however, to have separate schools carries with it, in my opinion, the right to have separate schools of the class of the common schools at Confederation, and covering the same field so far as secular education is concerned; that is to say, primary schools furnishing elementary instruction (par. 222).

The case was presented to the Judicial Committee of the Privy Council in London in February and March 1928. Attorneys Battle and Hellmuth for the appellants submitted a revised factum. In case the Privy Council did not agree with the definition of the high school as a common school, it was stressed as a second line of argument the fifth class matter. Separate schools were always able to offer a fifth class (grade ten). In fact, separate school boards were compelled by law to offer the fifth class where there was no high school. Therefore, the argument went, at least the first two years of high school was within the meaning of a pre-Confederation common school.

On June 12, 1928, Viscount Haldane delivered the judgment for the Lords of the Privy Council. The appeal was dismissed. The Privy Council concluded that the Council of Public Instruction's power of regulation was wide and that separate school boards could not offer secondary education without the Council's express or implied permission. The Council's power to regulate did not imply a power to abolish, but abridgment by regulation of the separate schools to elementary education was a long way from abolishment. Viscount Haldane did state that the separate school trustees had remaining to them a different remedy in the form of an appeal to the Governor General in Council of Canada under section 93(3) of the *British North America Act* (1867). Such an appeal would be based on administrative fairness and the alleged prejudicial affect on separate school rights or privileges in fact or practice, though not in law. Under section 93(4), the

Parliament of Canada may make remedial laws. However, the separate school trustees took no action on Viscount Haldane's suggestion. Separate school trustees were of the opinion that "the 'shall' in 93(1) seemed better than the 'may' in 93(4); 'demanding' legal rights was preferable to 'praying' for remedies" (Dixon, 1976: p. 151). There was also a belief that there was nothing to be hoped for from the Federal Government regarding Catholic high schools in Ontario. Instead, separate schools chose to concentrate on the kindergarten to grade ten programs while the Bishops implemented Sunday collections for the maintenance of the now private Catholic high schools and continued to submit periodic briefs to the Province of Ontario seeking government supported Catholic high schools.

Dixon (1976) provides a reference that offers a rare insight from the time of the *Tiny Case* into the culturally based concern of bias in the judicial process. In commenting on the decision of the Privy Council, the June 28, 1928, issue of *The Catholic Register and Canadian Extension* contained an article which complained about a somewhat remarkable coincidence. "The case was argued in four different courts before seventeen judges. Fourteen…are Protestants and three are Catholic. The former decided against as the latter in our favour" (p. 129).

Bill 30-Ontario Case (1987): *Reference re Bill 30, an Act to amend the Education Act (Ontario), [1986] 13 O.A.C. 241, Ontario Court of Appeal; [1987] 1 S.C.R. 1148, Supreme Court of Canada.*

In 1985, the Provincial Government of Ontario tabled Bill 30 in the Legislature, *An Act to amend the Education Act*. The preamble to Bill 30 stated that its purpose was to implement a policy of full funding for Roman Catholic separate high schools in Ontario. It read in part:

> …whereas it is recognized that today a basic education requires a secondary as well as an elementary education; and whereas it is just and proper and in accordance with the spirit of the guarantees given in 1867 to bring the provisions of the law respecting Roman Catholic separate schools into harmony with the provisions of the law respecting public elementary and secondary schools, by providing legislative recognition of and funding for secondary education by Roman Catholic separate schools…

Section 136-a of Bill 30 permitted "a separate school board to elect by by-law to perform the duties of a secondary school board with the approval of the Minister." Once approved by the Minister, the separate school board became "entitled to share in the legislative grants for secondary school purposes" under section 136-e(1). Section 136-j exempts separate school supporters within the jurisdiction of a separate school board from payment of property taxes for public secondary school purposes while section 136-k modifies the levying and collecting of taxes for separate school purposes to include secondary school purposes.

The Lieutenant Governor in Council, by Order in Council 1774/85 dated July 3, 1985, referred the following question to the Court of Appeal for Ontario for its consideration:

> Is Bill 30, An Act to amend the Education Act inconsistent with the provisions of the Constitution of Canada including the Canadian Charter of Rights and Freedoms and, if so, in what particular or particulars and in what respect (par. 1)?

On February 18, 1986, the majority of the Court of Appeal answered the Reference question in the negative; Bill 30 was not inconsistent with the Constitution of Canada.

> …it seems clear that by s. 93 the province can now, decide to return to separate schools the rights they exercised in 1867 to provide secondary school education and to receive equal proportionate funding for such education, unless there is something in the Charter to preclude it (par. 8).

With respect to the *Charter*, the Court of Appeal addressed the impact of sections 2(a) [freedom of conscience and religion] and section 15 [equality] on section 29 that protects separate school rights guaranteed under the Constitution of Canada. The court concluded that "…no part of the Constitution could be paramount over any other part…none of the provisions of the Charter could operate so as to render invalid any of the provisions of the Constitution Act, 1867" (par. 9). Subsequent to the Court of Appeal decision, the Legislature passed Bill 30 into law.

The Court of Appeal had stated that, under its power in the opening paragraph of section 93 to exclusively make laws in relation to education, the Legislature could now "decide" to return separate school rights that had been "exercised" in 1867. The Court of Appeal concluded, therefore, "…that it was not necessary to express an opinion as to the continuing validity of the Privy Council's decision in Tiny Separate School Trustees v.

the King, [1928]"(par. 7). The difference this time around was that the Provincial Government took the initiative to provide, as noted above in the preamble to Bill 30, "legislative recognition of and funding for" secondary education in separate schools. Six decades earlier, the government harboured no such generosity and the petitioners in the *Tiny Case* had failed in their attempts to demand their rights to publicly supported secondary education under section 93(1) of the *Constitution Act* (1867).

The decision of the Ontario Court of Appeal was appealed to the Supreme Court of Canada by a lengthy list of appellants, many of whom advanced the position that the Court of Appeal was correct in law that Bill 30 was *intra vires*. But by *choosing* to provide Roman Catholic schools with financial benefits not made equally available to other taxpayers and other religious schools, Bill 30 violated the equality guarantee in section 15(1) and the freedom of religion guaranteed by section 2(a) of the *Charter*. The appellants submitted that the rights and privileges contained in Bill 30 are not guaranteed under section 93(1) of the *Constitution Act* (1867). "The Tiny case was correctly decided and, having been accepted and relied upon for over sixty years, should be viewed as determinative on this issue" (par. 14).

The respondents submitted, naturally, that Bill 30 was *intra vires* and was protected under a combination of both the opening paragraph of section 93 as well as the words "or is thereafter established by the Legislature of the Province" contained in subsection 93(3). The provincial legislature was, they suggested, perfectly free after Confederation to enact legislation that augments the education rights of denominational schools. The respondents also made an alternative submission that the legislation was *intra vires* because it returns to Catholic separate school supporters the rights and privileges they held by law in Ontario at the time of Confederation as constitutionally guaranteed under section 93(1). The respondents urged the Supreme Court to find that the *Tiny Case* was wrongly decided and to overrule it.

Arguments were heard in January and February 1987. The Justices delivered their decision on June 25, 1987. The sole issue of the appeal was whether Bill 30 was consistent with the Constitution of Canada. But the Justices did choose to address three distinct questions: (1) was Bill 30 a valid exercise of the provincial power under the opening words of section 93 and section 93(3) of the *Constitution Act* (1867), (2) was Bill

30 a valid exercise of provincial power because it returns to separate school supporters rights constitutionally guaranteed to them by s. 93(1) of the *Act* (1867), and (3), if an affirmative answer was given to either one or both of the first two questions, whether the *Charter of Rights and Freedoms* is applicable to Bill 30 and, if so to what extent?

The Justices were unanimous that the appeal should be dismissed, but they were still divided in their reasons. Justice Wilson contributed the majority opinion on behalf of four of the seven Justices. With respect to the first question, Justice Wilson stated:

> In my view, s. 93(3)…expressly contemplates that after Confederation a provincial legislature may…pass legislation which augments the rights or privileges of denomination school supporters. It would be strange, indeed, if the system of separate schools in existence at Confederation were intended to be frozen in an 1867 mold (par. 23)…
>
> The protection of minority religious rights was a major preoccupation during the negotiations leading to Confederation because of the perceived danger of leaving the religious minorities in both Canada East and Canada West at the mercy of overwhelming majorities. Given the importance of denominational educational rights at the time of Confederation, it seems unbelievable that the draftsmen of the section would not have made provision for future legislation conferring rights and privileges on religious minorities in response to new conditions (par. 27).
>
> The province was to be able to grant new rights and privileges to denominational schools after Union in response to new conditions but…subsequent repeal of those post-Union rights or privileges would be subject to an appeal to the Governor General in Council. This is apparent from the very text of s. 93. I would therefore conclude, subject to the comments that follow concerning the applicability of the Charter of Rights to Bill 30, that Bill 30 is a valid exercise of the provincial power to add to the rights and privileges of Roman Catholic separate school supporters under the combined effect of the opening words of s. 93 and s. 93(3) of the Constitution Act, 1967 (par. 29).

With regard to the second question, Justice Wilson noted that while it might have been unnecessary in light of the answer to the first question to consider whether the separate schools in Ontario have a constitutionally guaranteed right to full funding by virtue of section 93(1), she would "address the issue since full argument was made on it during the lengthy hearing before the Court" (par. 30). Justice Wilson noted that section 93(1) only protects rights and privileges guaranteed "by law"at the time of Confederation. The *Separate Schools Act* (1863) made the main provisions of the *Common School Act* (1859) applicable to the separate schools. Section 27 of the *Act*

(1859) provided for the establishment of rural school sections. Subsection 16 of section 27 directed trustees of each [public] rural school section to permit all residents in such sections between the ages of five and twenty-one years to attend school, "but such permission shall not extend to children of persons in whose behalf a separate school has been established." Justice Wilson found that:

> The proviso in s. 27(16) meant that common school trustees in rural school sections were not obliged to permit children who were eligible to attend a separate school to attend the common school. This section was made applicable to urban school sections by s. 79(18) (par. 39)...
>
> The duties presumably included the teaching of the subjects prescribed by the trustees since s. 82(1) provided that it was the duty of every teacher of a common school "to teach diligently and faithfully all the branches required to be taught in the School according to the terms of his engagement with the Trustees, and according to the provisions of this Act". There were no provisions in the Common Schools Act of 1859 limiting common school teachers to teaching only certain branches (par. 40)...
>
> While the 1859 Act imposed a duty on trustees to report to the Local Superintendent "the branches of education taught in the school"..., there was no express and exclusive power in the Council of Public Instruction to set down the branches of education to be taught ...I would conclude, therefore, that the trustees of the common schools had by law the power, subject to regulation to prescribe what branches of education were to be taught in a particular school and could, by law, prescribe any level of instruction which in their view, the needs of the particular community warranted. This would include instruction at the secondary school level (par. 41).

Having found that common school trustees had the power by law to prescribe the level of instruction, Justice Wilson applied that finding to separate school trustees.

> The Separate Schools Act (Scott Act) of 1863...authorized Roman Catholics to establish separate schools and elect trustees "for the management" of each school (ss. 2-6). The trustees were vested with "all the powers in respect of Separate Schools, that the Trustees of Common Schools have and possess under the provisions of the Act relating to Common Schools...1859" (s. 7) and all "the same duties...as Trustees of the Common Schools" (s. 9). This meant that separate school trustees, like common school trustees, had a duty to permit residents between 5 and 21 years of age to attend school and a power, subject to regulation, to determine the subjects to be taught and the level of instruction (par. 45).

Justice Wilson next reviewed the various court decisions in the *Tiny Case* (1928). She had this to say about the decision of the Supreme Court Justices and the Privy Council at that time:

> Those justices who…dismissed the appeal held that the regulatory power of the Council of Public Instruction was sufficiently broad to have enabled it, had it so chosen, to prohibit secondary level instruction. The existence of such a broad power was sufficient to deny s. 93(1) protection (par. 50).
>
> …The Privy Council shared the view that the broad power of regulation vested in the Council of Public Instruction, including the power to determine what courses of study could be offered, was sufficient to prevent the separate schools from providing secondary school education. Even though the broad power of regulation had never been used by the Council prior to Confederation, its very existence meant that separate secondary school education fell outside the protection of s. 93(1) (par. 51).

Justice Wilson noted that the Attorney General of Ontario had specifically asked the Court to review the Privy Council's decision in the *Tiny Case* and had submitted that the courts had been asked the wrong question. All of the judgments in the *Tiny Case* had focused on "whether the separate schools had an unfettered discretion to operate their schools free from any regulatory interference" (par. 54). The Attorney General subbmitted that the appropriate question, "unsatisfactorily addressed by the various courts in Tiny, was what level of instruction were separate schools permitted by law to provide in 1867" (par.54). Justice Wilson agreed with that submission and concluded:

> It is…well established today that a statutory power to make regulations is not unfettered. It is constrained by the policies and objectives inherent in the enabling statute. A power to regulate is not a power to prohibit. It cannot be used to frustrate the very legislative scheme under which the power is conferred (par, 56)…
>
> Section 93(1) should, in my view, be interpreted in a way which implements its clear purpose which was to provide a firm protection for Roman Catholic education in the Province of Ontario and Protestant education in the Province of Quebec. To interpret the provisions of the Scott Act and the Common Schools Act of 1859 in the way in which…the Privy Council interpreted them in Tiny is to render this constitutionalized protection illusory and wholly undermine this historically important compromise (par. 58).
>
> I would therefore conclude that Roman Catholic separate school supporters had at Confederation a right or privilege, by law, to have their children receive an appropriate education which could include instruction at the secondary school

> level and that such right or privilege is therefore constitutionally guaranteed under s. 93(1) of the Constitution Act, 1867 (par. 59).

Justice Wilson noted "that if the foregoing right was to be meaningful an adequate level of funding was required to support it" (par. 60). Since separate schools were entitled to proportionate funding under section 20 of the *Separate Schools Act* (1863), Justice Wilson concluded that such proportionate funding was also a right protected by Section 93(1).

With respect to the third question, Justice Wilson addressed the applicability of the *Charter of Rights and Freedoms* to Bill 30 noting that it is clear that under section 29 of the *Charter*, other sections of the *Charter* cannot be applied to minority religious rights protected under the Constitution. But Justice Wilson went beyond that to address the question of whether section 29 is even necessary?

> I have indicated that the rights or privileges protected by s. 93(1) are immune from Charter review under s. 29 of the Charter, I think this is clear. What is less clear is whether s. 29 of the charter was required in order to achieve that result. In my view, it was not. I believe it was put there simply to emphasize that the special treatment guaranteed by the Constitution to denominational, separate or dissentient schools, even if it sits uncomfortably with the concept of equality embodied in the Charter because [it is] not available to other schools, is nevertheless not impaired by the Charter. It was never intended, in my opinion, that the Charter could be used to invalidate other provisions of the Constitution, particularly a provision such as s. 93 which represented a fundamental part of the Confederation compromise (p. 30).

Justice Wilson then went on to address the hypothetical question of whether section 29 provided immunity from Charter review even if Bill 30 had only been supportable under the Legislature's plenary power in the opening paragraph of section 93 and section 93(3)? She concluded that section 93(3) rights are not guaranteed in the same way that section 93(1) rights are guaranteed. The legislature that gave them can later change them. But section 93(3) rights "are insulated from Charter attack as legislation enacted pursuant to the plenary power in relation to education granted to the provincial legislatures as part of the Confederation compromise" (par. 64).

Three justices shared in the minority opinion that since Bill 30 was a valid exercise of the provincial power in relation to education under the opening words of section 93 and section 93(3), it was unnecessary to consider the operation of section

93(1). It cannot be concluded that they disagreed with the majority on question two. It is to be hoped that if they had they would have made that abundantly clear. It is more likely that they felt the Court should not venture beyond what was minimally necessary to resolve the appeal.

The Greater Montreal Case (1989): *Protestant School Board of Greater Montreal et al. v. Attorney-General of Quebec et al., [1987] 6 Q.A.C. 237, Quebec Court of Appeal; [1989] 1 S.C.R. 377, Supreme Court of Canada; [1989] 2 S.C.R. 167, Supreme Court of Canada.*

On February 25, 1981, the Government of Quebec passed two regulations as Orders in Council in accordance with section 16(7) of the *Education Act* (1977), as amended in 1979. The purpose of the regulations was to establish a uniform curriculum for all schools in Quebec. One regulation addressed elementary schools while the other addressed secondary schools. The Protestant School Board of Greater Montreal, on behalf of the Quebec Association of Protestant School Boards, petitioned the Quebec Superior Court for a declaratory judgment that section 16(7) of the *Education Act* (1977) and the two Orders in Council issued thereunder were an infringement of the rights and privileges granted to Protestants in Quebec by section 93 of the *Constitution Act* (1867) and were *ultra vires* the authority of the provincial Legislature.

On October 31, 1985, Justice Brossard of the Quebec Superior Court dismissed the request for declaratory judgment. The Protestant School Board of Greater Montreal appealed this decision to the Quebec Court of Appeal. On May 4, 1987, the three appellate court justices were unanimous in their opinion that the appeal should be dismissed. Speaking for the Court of Appeal, Justice Nichols concluded:

> In my view, the Tiny case applies just as much in Quebec as it does in Ontario (par. 259)…. In 1843 the Legislature passed as Act which was to apply only within the old boundaries of Upper Canada. It did the same in 1846 for Lower Canada (par. 261). But the structure created in 1841 by the Act common to the two territories [the *Common School Act*, 1841] was extended in these particular Acts and those which were enacted subsequently. Both preserved the system of common schools and separate schools (par. 262)… [At the time of Confederation] ultimate control of the pedagogical system remained under the authority of the Legislature (par. 263)… The decision in Tiny held that in Upper Canada separate schools did not have control over the pedagogical system (par. 271)… The issue

> in dispute in the case before us is the same as that which was in dispute in the Tiny case for the separate schools in Ontario (par. 279).

The Supreme Court's decision on June 25, 1987, in the *Bill 30-Ontario Case*, which changed the judgment in the *Tiny Case*, was still a few weeks away when Justice Nichols made the above noted references. He did not have benefit of that new wisdom from the Supreme Court.

The Greater Montreal Protestant School Board and the Quebec Association of Protestant School Boards appealed the decision of the Quebec Court of Appeal to the Supreme Court of Canada. The Supreme Court's final decision was handed down on March 16, 1989. All of the six Justices participating in the decision were unanimous that the appeal should be dismissed, although they differed slightly in their arguments. Justice Beetz contributed the majority opinion.

Justice Beetz made reference to the Conseil superieur de l'Education, an administrative body established by statute to oversee the religious and moral aspects of public education in Quebec. The Conseil consisted of two committees, one Catholic and one Protestant. The Minister of Education had submitted the draft regulations to the Conseil, which gave its opinion on September 30, 1980, nearly five months before the passage of the two regulations.

> In what can be nothing but an effort to respect what is conventionally understood as the distinction between denominational and non-denominational teaching, the government has made special allowance in its uniform curriculum for moral and religious instruction in schools recognized as Catholic or Protestant. The content of this component of a pupil's curriculum is not determined by the Minister under the impugned regulations but rather by the Catholic or Protestant committee of the Conseil superieur de l'Education in regulations made by those bodies pursuant to s. 22 of An Act respecting the Conseil superieur de l'Education. Furthermore, the school board is not without input for the curricula other than religious and moral instruction. It is charged with adapting the province-wide regime to local needs and adding to the prescribed curricula when necessary, with approval. The school board participates in the evaluation of the curricula. The appellants are left with the difficult argument that, notwithstanding this allowance made for moral and religious instruction in recognized Protestant schools,…the imposition of the uniform curriculum by the Minister prejudicially affects a right or privilege with respect to Protestant denominational schools protected by s. 93 of the Constitution Act, 1867 (par. 23).

Justice Beetz focused on what he considered to be the central question in this appeal:

> Indeed, it was the position of the Attorney-General of Quebec that the question central to the resolution of this appeal turns on the jurisdiction of the province to determine the programme of study in all public schools in the province, including those schools which operate under the protection of the denominational guarantee in s. 93(1) of the Constitution Act, 1867. I agree that the issue as to whether the province can establish uniform curriculum across the province is to be determined solely on the basis of legislative jurisdiction (par. 25).

Justice Beetz quoted from Justice Wilson's majority opinion in the *Bill 30-Ontario Case*:

> "Section 93(1) should...be interpreted in a way which implements its clear purpose which was to provide a firm protection for Roman Catholic education in the Province of Ontario and Protestant education in the Province of Quebec (par. 32)... It must be remembered...that s. 93(1) only protects rights and privileges guaranteed by law. Our task therefore is to examine the laws in force prior to Confederation to see what rights and privileges they gave" (par. 34).

The law of Quebec with respect to the education at the time of Confederation is found principally in a statute entitled *An Act respecting provincial Aid for Superior Education,--and Normal and Common Schools* (1861), which Justice Beetz referred to as the *1861 Statute*. Giving clear evidence of its previously noted shared origin with the Ontario *Common Schools Act* (1859), under the *1861 Statute*, authority over schools was divided between a government-appointed Council of Public Instruction and the school commissioners and trustees representing the local community. Under section 21(3) of the *1861 Statute*, the Council of Public Instruction was empowered to make "such regulations as the Council deems expedient for the organization, government and discipline of Common Schools, and the classification of Schools and Teachers." Under section 21(4), the Council was empowered "to select or cause to be published...books, maps and globes, to be used to the exclusion of others..." Section 65(2) stipulated that "it shall be the duty" of the school commissioners and trustees "to provide that no other books be used in the Schools under their jurisdiction than those recommended by the Council of Public Instruction." Section 65(2) also provided the exception, "but the Cure, Priest or officiating Minister, shall have the exclusive right of selecting the books having reference to religion and morals, for the use of the Schools for children of his own religious faith." Justice Beetz concluded the following from these statutory references:

> I see the authority of the council in s-s 21(4) to "select or cause to be published" the books to be used to the exclusion of others, in schools including those under the control of the school commissioners, as the source of authority over the

> content of the curriculum followed in those schools…The power to choose books "having reference to religion or morals" was to be made not by the central authority but rather by the "Cure, Priest or officiating Minister" pursuant to s-s. 65(2), presumably because this was seen as to dangerously close to what would eventually become the constitutional protected right of the religious minority to set the denominational aspect of school curriculum (par. 43).

Justice Beetz noted that the "link between the substantive content of school curriculum and school books" (par. 43) was as true in 1989 as it was in 1861.

Justice Beetz next made specific reference to the core argument of the appellants:

> The appellants contend that the regulations undermine constitutional protection of Protestant schools because they are contrary to Protestant educational philosophy. Their view is that, because of the inherently pluralistic nature of the Protestant faith, much of what is generally considered to be the non-denominational aspect of education is coloured by the denominational educational philosophy upon which the school is organized. Because certain non-denominational aspects of curriculum are necessarily affected by this Protestant educational philosophy, they too should benefit from constitutional protection (par. 51).

While Roman Catholic denominational school adherents would certainly not share the Protestant appellants' point about the inherently pluralistic nature of their faith, the appellants' point about the non-denominational aspect of education being coloured by the denominational educational philosophy upon which the school is organized would certainly be espoused by Roman Catholic denominational school adherents as well.

Justice Beetz concluded that the impugned law and regulations met the constitutional requirement by granting to school trustees the power to adapt prescribed curricula, in a manner consistent with their religious values, and to create additional curricula, subject to approval, where they considered it necessary.

> I do not accept the appellants' position that Protestant educational philosophy extends constitutional protection beyond what is necessary to give effect to denominational guarantees. The appellants are attacking non-denominational aspects of curriculum which are not necessary to give effect to denominational guarantees (par. 58).

In her concurring minority opinion, Justice Wilson concluded that it is "open to the Legislature of Quebec to regulate the powers of dissentient school boards over curriculum, provided such regulation did not prejudicially affect the denominational character of such schools" (par. 78).

In dismissing the appeal at the appellant court level, Justice Nichols had stated that the issue in dispute in the *Greater Montreal Case* is the same as that in the *Tiny Case*, given the similarities and common origin of the protected legislation in Ontario and Quebec. Justice Nichols had made that reference to the *Tiny Case* just a few weeks before the Supreme Court's decision in the *Bill 30-Ontario Case* changed the *Tiny Case*. In the *Bill 30-Ontario Case*, Justice Wilson on behalf of the Supreme Court had changed the Supreme Court's earlier decision in the *Tiny Case* and found that the Province of Ontario did not have, at the time of Confederation, sufficient regulatory making authority to control its pedagogical system by controlling the grade levels to be taught. Twenty months later in the *Greater Montreal Case*, the same Justice Wilson concurred with the majority decision of Justice Beetz that the Province of Quebec did have, at the time of Confederation, sufficient regulatory making authority to control its pedagogical system by controlling the standardized curriculum to be taught. A question arose as to whether the Supreme Court's decision in the *Greater Montreal Case* was somewhat contradictory to its decision in *Bill 30-Ontario Case*?

> Wilson J., in her concurring opinion in *Greater Montreal*, distinguished the Ontario reference case by stating that the impugned Ontario regulation contested in the original *Tiny* case had the effect of prohibiting Roman Catholic schooling, rather than merely regulating it. Beetz J., writing for the majority, agreed with Wilson J. on this point. Thus, the Supreme Court was unanimous in its view that the conclusions reached in Greater Montreal were not incompatible with those reached earlier in the Ontario reference case (Smith and Foster, 2001, March: p. 437).

While it might be assumed that the Supreme Court of Canada had spoken and thereby settled the question in the *Greater Montreal Case*, the Greater Montreal Protestant School Board on behalf of the Quebec Association of Protestant School Boards had the rare audacity to suggest formally to the Supreme Court that they had not properly considered the historical facts of the matter. On June 27, 1989, the appellants filed with the Supreme Court a motion for a rehearing of their appeal. The Court's brief decision was given on August 10, 1989:

> In essence the applicants are saying that, when one considers all the material before the Court…one cannot but make…findings in a manner favourable to their case. Having found adversely to the applicants, the Court, argue applicants, must have overlooked this material and therefore should rehear the case (par. 2).

> This is an argument that any unsuccessful party could make seeking a rehearing. There is nothing here before us supportive of the fact that the Court misled itself or was misled as regards what was the record before it, the nature of the issues, or the questions to be addressed (par. 3)…

The noble efforts of the Quebec Association of Protestant School Boards in this case could be summed up as follows:

> Notwithstanding the apparent contradiction with *Reference re Bill 30*, by the end of *Greater Montreal,* the QAPSB had been told in no uncertain terms that section 93 served to protect only the denominational aspects of schools (Smith and Foster, 2001, March: p. 437).

Key Findings

The three judicial decisions discussed in this chapter have added the following key findings, which have potential applicability to Alberta. They assist our ability to understand the scope of decision making power of the provincial government with respect to the governance issues of prescribing grade levels and a standardized curriculum for separate school jurisdictions.

1. *Separate school rights and privileges protected by section 93 of the Constitution Act (1867) are those that existed in law at the time the province joined Confederation and do not include those that existed in practice only (Tiny, Bill 30-Ont., Greater Montreal [reinforcing the principle introduced in Mackell]).*
2. *The provincial government is able to limit the scope of education, courses to be taught, or grade levels to be offered in separate schools only if specifically empowered to do so by law at the time the province joined Confederation. Separate schools have the same rights and responsibilities for the management of their schools as public schools (Tiny, Bill 30-Ont.).*
3. *No part of the Constitution is paramount over any other part. Sections 2(a) [freedom of conscience and religion] and section 15(1) [equality] of the* Charter of Rights and Freedoms, Constitution Act *(1982) cannot be used to in any way lessen the protection of separate school rights guaranteed by section 93 of the* Constitution Act *(1867) and as recognized by section 29 of the* Charter. *That would be true even if section 29 were not present in the* Charter *(Bill 30-Ont.).*

4. *Subsequent to a province joining Confederation, the provincial government is free to augment or add to the education rights or privileges of separate schools under both the opening words of section 93 [may exclusively make laws in relation to education] and subsection (3) of section 93 [at the union or is thereafter established] of the* Constitution Act *(1867). Such additional rights or privileges, like those existing at the time the province joined Confederation, are insulated from* Charter *attack and would be even if section 29 of the* Charter *were not there. What the province has given, the province can subsequently take away, but subsequent repeal of those additional rights or privileges is subject to an appeal to the Governor General in Council (Bill 30-Ont.).*
5. *A statutory power of the provincial government to make regulations is not unfettered. It is constrained by the policies and objectives inherent in the enabling statute. Regulation cannot be used to frustrate the very legislative scheme under which the power to regulate is conferred (Bill 30-Ont.).*
6. *The provincial government may establish a uniform curriculum across the province for both public schools and separate schools. This does not offend separate school rights and privileges protected by section 93(1) of the* Constitution Act *(1867). Separate schools may adapt this curriculum by offering it in a manner consistent with their religious values (Greater Montreal).*
7. *Only the denominational aspects of education in separate schools are protected by section 93(1) (Greater Montreal).*

CHAPTER FIVE

ISSUES OF GOVERNANCE: ALTERING GEOGRAPHIC BOUNDARIES *and* THE RIGHT TO EXIST

Introduction

This chapter continues the review of issues related to the governance of separate school jurisdictions. In the previous two chapters devoted to issues of governance, the constitutionality of section 17 of the *Alberta Act* was addressed followed by the ability of a province to dictate educational policy issues to separate school jurisdictions, such as the language of instruction, the grade levels to be offered, or a standardized curriculum. The remaining issues relating to the governance of separate school jurisdictions to be considered, before reviewing cases occurring after the restructuring of the 1990s, is the ability of the provincial government to change the geographic territory or boundaries of separate school jurisdictions or to question a separate district's legal right to exist.

Altering Geographic Boundaries

Over the decade between 1984 and 1993, the Province of Quebec successfully transformed its system of education from one based on the Roman Catholic and Protestant religious distinction to one primarily based on linguistic distinction, blanketing the province with school authorities that were either French or English. But religious education rights in the Province of Quebec were protected by Section 93 of the *Constitution Act* (1867), as are similar rights in other provinces. This gives rise to some fundamental questions regarding the sanctity of the geographic territory in which dissentient separate jurisdictions have been established and even of their fundamental right to exist. Can a provincial government take lands away from a separate jurisdiction and reduce the size of the geographic area for which it is responsible for the education of those children of the minority faith residents? Under what circumstances can a provincial government cause a separate school jurisdiction to cease to exist? What limitation has the court placed on the legal status of separate school jurisdictions? In addition to the saga played out in Quebec, judicial experiences from the Provinces of Saskatchewan and Alberta will also provide insights into some answers to those questions.

The QAPSB Case (1985): *Quebec Association of Protestant School Boards v. the Attorney General of Quebec, [1985] 21 D.L.R. (4th) 36, C.S. 872, Quebec Superior Court.*

As was discussed in the *Hirsch Case*, the Province of Quebec provided public education in three types of schools: common, dissentient, and confessional schools. Common schools were public, supposedly religiously neutral, open to all, and operated throughout the province outside the Cities of Montreal and Quebec. Dissentient schools were minority religious education schools reserved for Protestant or Roman Catholic minorities outside those same two cities, but were usually Protestant. The term confessional schools was applied to the two distinct denominational school boards in each of the Cities of Montreal and Quebec, one for Roman Catholics and one for Protestants. This was the system established in Quebec's precedent legislation in place at the time of Confederation, *An Act respecting Provincial Aid for Superior Education,--and Normal and Common Schools* (1861).

On December 21, 1984, assent was given to Bill 3, the *Act respecting public elementary and secondary education* (the *Act*), which was intended to replace the *Education Act* (1977). The *Act* was further amended on June 4, 1985. Bill 3 represented a major reform of the Province of Quebec's school structures. This *Act* intended to replace the existing school boards in the entire territory of the province with linguistic school boards for either anglophones or francophones. All existing school boards would disappear with the exceptions of the denominational Roman Catholic and Protestant school boards of Montreal and Quebec, whose territory would be reduced and limited to the municipal boundaries of the Cities of Montreal and Quebec as they existed in 1867, and the five existing dissentient school boards of Baie Comeau, Greenfield Park, Laurentienne, Portage du Fort, and Rouyn, whose jurisdictions would be limited to the territory existing at the passage of the *Act*. The *Act* foresaw a reorganization of territorial boundaries for the new liinguistic school boards and the transfer of assets and liabilities as well as personnel from the old boards to the new ones.

The Protestant School Board of Greater Montreal and the Quebec Association of Protestant School Boards asked the Quebec Superior Court to declare the offending *Act* to be *ultra vires* on the basis that it prejudicially affected the rights and privileges guaranteed to Roman Catholics and Protestants by section 93 of the *Constitution Act* (1867). The plaintiffs also requested the court to issue an injunction to prohibit the provincial government from implementing the provisions of the *Act* relating to the establishment of new linguistic school boards on the territory that they now serve and the transfer of their assets and personnel. The plaintiffs alleged that they are the legal successors of various denominational dissentient school boards previously constituted within the territories that they now serve and that were gradually integrated or amalgamated with them over the years. The defendant Attorney General argued that the denominational protection conferred by section 93 was limited to those territories served in 1867 in the Cities of Montreal and Quebec by the Protestant and Roman Catholic school boards that existed at that time as well as those territories served by existing dissentient schools for Catholics and Protestants as at December 21, 1984.

Justice Brossard delivered his judgment on June 25, 1985. One of the most interesting aspects of the decision for this researcher was the way Justice Brossard described the distinctions between Protestant denominational schools and Roman Catholic denominational schools.

> The concept of a denominational Protestant school is pluralist due to the fact that many Protestant denominations exist arising from numerous and varied origins (par. 27). The result is that the Protestant schools in Quebec developed with a pluralistic philosophy under which religious instruction was principally concerned with the creation of an individual religious conscience. The teaching of secular matter is totally independent and should not suffer any interference arising from religious doctrine or dogma (par. 28)…
>
> Finally, according to the evidence, it is impossible to conceive that Protestants could agree to be educated in a linguistic school which would be subject to a Catholic educational approach (par. 31). On the contrary, the evidence presented…established that the concept of a Catholic denominational school implies the influence of the principles and dogmas of Catholicism in all spheres and facets of education (par. 32).

Justice Brossard returns to this theme and offers this summary:

> There exists, therefore, between Catholics and Protestants, fundamental differences in their respective concepts of a denominational school. For the former, a school constitutes a whole, of which each facet must reflect Christian and Catholic values and it constitutes a privileged place of religious instruction. For the latter, on the contrary, religious instruction must be disassociated from other subjects in order to respect the freedom of individual conscience (par. 37).

It would thus appear that Protestant denominational schools must be restrained in their religious teachings due to the plurality of values and beliefs within the Protestant experience. The oneness of the Roman Catholic experience permits its religious teaching to reach into and shape all aspects of a student's educational experience in Roman Catholic denominational schools.

Another interesting component of the court's decision is that Justice Brossard raised the issue that the public common schools outside of the Cities of Montreal and Quebec were, in actual practice, generally Roman Catholic denominational schools. The really fascinating result of this situation is Justice Brossard's insight into why Roman Catholic authorities had not actively opposed Bill 3 and that Protestants unified in their support of Protestant denominational schools, not so much for the necessity or furtherance of Protestant religious teachings as to ensure that their students did not find themselves in Roman Catholic denominational schools. Perhaps herein is found the core motivation for the Quebec Association of Protestant School Boards objecting to Bill 3 and bringing this case forward.

> The evidence shows that the Conference of Catholic Bishops of Quebec, by "political prudence"... seems ready to live with the impugned Act possibly in the hope that the Catholic majority will succeed in gradually reconfessionalizing their schools. The Protestants...are opposed to this latter possibility under Bill 3 (par. 38). As strange as it may sound, the proof shows that the unifying element among the Protestants, when appreciating the necessity of maintaining the Protestant denominational character of their schools, is essentially a negative one: it is required to prevent a student of the Protestant faith from finding himself in a Catholic denomination school (par. 39).

Least anyone would question the reality of public common schools actually being Roman Catholic denominational schools in practice, Justice Brossard leaves little to doubt:

> It is sufficient to say that gradually over the years...two distinct school systems were eventually constituted outside the Cities of Quebec and Montreal. These systems, one for Catholics, the other for Protestants, administered common schools and eventually covered in the case of Catholics, almost the whole of the territory of Quebec and in the case of Protestants, defined parts of this territory. The existence of these two distinct denominational systems has been recognized since 1899 in the statutes of Quebec (par. 52)...
>
> Another of the factual consequences of this historical evolution is that, *de facto*, over the years, the public or "common" school boards in the sense of the 1861 statute were gradually confessionalized in all respects...(par. 66).

Justice Brossard noted that, over the years, the right of dissent had been frequently exercised by both Protestants and Catholics, but most often by the former. Many dissentient schools became annexed into Protestant or Catholic majority common schools, respectively. In 1971 and 1972, two statutes were adopted with the essential aim of consolidating school boards. As a result, all existing dissentient school boards, other than the remaining five listed in the impugned *Act*, were dissolved and "all the assets and personnel of the dissentient school corporations were transferred to enlarged new school boards which were 'for Catholics' and 'for Protestants'" (par. 62). This gave rise to the following question respecting the rights of the minority faith residents outside the Cities of Montreal and Quebec:

> Are the acquired rights concerning established dissentient schools limited to dissentient school boards still in existence on December 21, 1984…? Or must they equally extend to all Catholics and Protestants whose territory on December 21, 1984 included territories previously served by Catholic or Protestant dissentient schools, but which have since been integrated into the existing system of Catholic and Protestant school boards…(par. 21)?

Justice Brossard referenced Viscount Cave of the Privy Council who stated the following in the *Hirsch Case* that "it is clear that no post-Union annexation of territory could deprive any class of person of the protection afforded to them by s. 93 of the Act of 1867" (par. 131). This led Justice Brossard to the following conclusion:

> The court is of the opinion that to hold that the legislation and the Orders in Council subsequent to 1867 had the effect of removing from the dissentients the rights acquired from the exercise of their rights would be to interpret them in a way contrary to s. 93 of the *Constitution Act, 1867*. The court is of the opinion that the rights acquired by the exercise of the right of dissent themselves acquire the same protection as the right of dissent and they cannot be prejudicially affected without infringing s. 93 of the *Constitution Act, 1867* (par. 135).

The other element of major disagreement was the question of whether the class of persons who constitute the majority outside the Cities of Montreal and Quebec also have rights and privileges relating to their denominational schools? Justice Brossard noted that the 1861 statute referred in various sections to the "religious and denominational aspects of the schools under the administration and management of the commissioners" (par. 139) of the common schools. He even posed the question, and perhaps his personal belief, that if the legislators had:

> …found it necessary to protect the minorities with…the 1861 statute, was this not necessarily because the majority had the unlimited power, therefore *ipso facto* the right, to impose its viewpoint and to confessionalize the schools under its control, even if these schools remained common and open to all (par. 138)?

However, Justice Brossard stated that he was bound by the decision in the Privy Council and once again referenced Viscount Cave of the Privy Council in the *Hirsch Case*.

> No doubt it is true, as stated by the Canadian Courts, that in most of the school districts in the rural area the majority of the landholders and householders are Roman Catholics, and, accordingly, that the common schools in those districts (other than the dissentient schools) are in fact controlled by members of that religious community; but, if so, *the result is due to the circumstances of the particular school districts, and it is not a right or privilege to which any class of persons are "bylaw" entitled*…(emphasis added.) (par. 149).

In addition to this reference from Viscount Cave in the *Hirsch Case* of 1926, previous reference was made to essentially this same point made by Chief Justice Fitzpatrick of the Supreme Court of Canada in the *Gratton Case* of 1915 and reinforced by both Justice Stevenson of the Alberta Court of Queens Bench and Justice McDermid of the Alberta Court of Appeal in the *Calgary Public Case* of 1981.

Section 486 of the impugned *Act* purported to protect the right to dissent guaranteed by section 93 of the *Constitution Act* (1867) in those territories beyond those five dissentient jurisdictions listed. Justice Brossard concluded that such protection was inadequate as it "only covers the means of exercise of the right of dissent and not what it includes" (par. 175).

With respect to the Roman Catholic and Protestant school boards of the Cities of Montreal and Quebec, Justice Brossard found that "the 1861 statute made a direct correlation between the territories served by Catholic and Protestant school boards and the territories of the Cities of Montreal and Quebec" (par. 56). He concluded that the "classes of persons" referred to in section 93(1) "cannot be other than the Protestants and Catholics residing within the present limits of the Cities of Montreal and Quebec" (par. 125). Justice Brossard stated that it would be no more logical to limit the protection of section 93 to the territories of the two cities as they existed in 1867 than it would be "to limit the protected 'classes of persons' to those persons who were alive in 1867" (par. 126).

Justice Brossard noted that while it is possible that some substantial amendments could remedy the defects of the impugned *Act*, such is not the role of the court:

> In the opinion of the court, it is impossible, to use the words of Chouinard J. in the case of *Greater Hull*, to "sort out the confusion" (par. 212)… In these circumstances, the court is of the opinion that the *Act respecting public elementary and secondary education*, as amended by the Act of June 4, 1985, is *ultra vires* the powers of the Legislature of Quebec and is null in its entirety (par. 215).

With respect to the request for an injunction to prevent the provincial government from implementing the *Act*, Justice Brossard fully expected that his decision would be appealed all the way to the Supreme Court of Canada. If the impugned law was eventually declared *ultra vires* after being implemented, that implementation "would have to be undone almost immediately and at a time when the present school boards would have ceased to exist. It is no exaggeration to foresee chaos in these circumstances""(par. 222). The requested injunction was granted.

Despite Justice Brossard's expectation that his decision would be contested through the higher courts of the land, it was not to be.

> In 1986, the newly elected provincial government decided not to appeal the court decision but began to develop a completely new *Education Act*, which was adopted in 1988 (Smith and Foster, 2001, March: p. 441).

The St. Walburg Case (1987): *St. Walburg Roman Catholic Separate School Board District No. 25 v. Turtleford School Board of Education Division No. 65, [1987] S.J. No. 79 C.A. No. 8730, Saskatchewan Court of Appeal.*

In 1944, the Legislature of Saskatchewan passed *The Larger School Units Act* for the purpose of encouraging the creation of larger school governance units. Section 51 of that *Act* provided that:

> Subject to the other provisions of this Act, the board of a unit may enter into an agreement with the board of trustees of any town school district, separate school district or consolidated school district for the inclusion of such district in the unit upon such terms as may be agreed upon…

In 1946, St. Walburg Roman Catholic Separate School District No. 25 entered into an agreement to become part of one of these larger school units. As a result of that agreement, the Minister of Education, on August 14, 1946, ordered that the St. Walburg

Separate District be included in Sub-unit No. 5 of the Turtleford School Unit No. 65, which was in fact a public school authority. Under the terms of the agreement, all properties both real and personal belonging to St. Walburg were transferred to the School Unit. The School Unit assumed responsibility for all debts and liabilities, contracts, duties and obligations of St. Walburg. The separate school would provide education for the children of Roman Catholic residents in Grades 1 to 8 while the School Unit would provide education for all students in Grades 9 to 12. The separate school board, like other local district boards, would continue to exist and would continue to oversee its elementary school. The agreement also provided that separate school rights and privileges would be protected.

> Nothing in this agreement shall deprive or interefer [sic] in any way with all the rights and privileges that Separate Schools are entitled to by virtue of The School Act or The School Unit Act, and the Separate School Board shall have the same rights and privileges as other member school districts with respect to making recommendations to the Board of the School Unit as to the conduct of the High School and the appointment of teachers therein (par. 10(6)).

The board of St. Walburg worked satisfactorily under this system of education for many years. In 1969, the separate school board and the larger school unit board reached a new agreement under which the separate school board would provide for Grades 1 to 6 while the public school unit board would provide for Grades 7 to 12. This arrangement continued until 1977 when the public school burned down. The two boards again cooperated to build a new school which housed all grades in one building, the Catholic elementary school for Grades 1 to 6 in one wing and the public school for Grades 7 to 12 in another. The practice of the separate board overseeing the elementary school and the public board of the larger school unit overseeing the high school continued to work quite well. "The actual administration was left to the larger school unit who, for example, financed the schools and hired and fired teachers, although always on the advice and after consultation with the local boards"(par. 1).

In 1978, the Saskatchewan legislature passed a new *Education Act*, which consolidated and replaced fifteen other statutes, including the *School Act* and the *Larger School Units Act*. Section 19 of the new *Education Act* provided that the common terminology of *school division* would be used for all larger school units and all school districts, both public and separate, not included in the larger school units. All school divisions would be governed by a Board of Education. As a consequence, the Turtleford School Unit No. 65 became the Turtleford School Division No. 65, but it appears that little else changed in the routine governance of the new school division.

One unusual provision of the long-term arrangement between the St. Walburg Separate District and the Turtleford School Division was that within the two St. Walburg districts, both public and separate:

> …with respect to the election of the elementary school Trustees, only Catholic ratepayers could run for office and only non-Catholics could be elected to the high school board. This changed in 1976 when all the ratepayers could vote for trustees elected to the high school board. Notwithstanding that this arrangement was probably illegal, no one seems to have seriously questioned the arrangement until about November of 1983 when a public school supporter complained that she was unable to vote in electing trustees to the separate school board (par. 1).

As a result of the complaint, the Board of Education of Turtleford School Division sought an opinion from the Department of Education as to the legality and appropriateness with which the educational operations and governance was carried on in the St. Walburg public and separate districts. The opinion of the Department of Education came back that the St. Walburg Separate School District ceased to have any legal status as of January 1, 1979, the date the new *Education Act* came into force. “It is clear that up to this point, no one had any inkling that the Separate School District might be operating illegally, a fact which if true, can only be described as an amazing oversight on someone’s part” (par. 1).

What the boards of St. Walburg Separate District and Turtleford School Division had missed and the Department of Education obvious failed to communicate effectively was the consequence that when all larger school units and all public and separate school districts not included in larger school units became school divisions, “all other entities simply disappeared” (par. 3). In fact, section 120 of the *Education Act* (1979) had redefined the historic boundaries of school districts within a school division, not including a city, to be the attendance areas for schools providing education services from kindergarten to Grade 9. Boards of Education were free to change the boundaries of these school districts from time to time to meet the attendance needs of their students and advise the Department of Education accordingly.

The St. Walburg Roman Catholic Separate District turned to the courts claiming that, under the *Education Act* (1978), the Roman Catholic residents in the district were being unlawfully denied the rights and privileges guaranteed to them under section 93 of the *Constitution Act* (1867) and section 17 of the Saskatchewan Act (1905). Justice Noble of the Saskatchewan Court of Queens Bench found against St. Walburg. The separate district then appealed that decision to the Saskatchewan Court of Appeal. Justice Tallis delivered the unanimous decision of the appellant court's five members on January 27, 1987.

It was noted that under section 78 of the updated *Larger School Units Act* (1965), the Board of Trustees for the separate school district had ceased to have any powers of the Board of Trustees under the *School Act* (1965). However, the appellant, St. Walburg, pointed out that this was qualified by section 130 of the *Larger School Units Act* (1965), which provided that the provisions of the School Act continued to apply except insofar as they were inconsistent with the provisions of the *Larger School Units Act*. Accordingly, the provision for the election of the Board of Trustees for the separate school district continued to apply as did the provisions of the *School Act* dealing with separate school districts. The appellant also pointed out that section 94 of the *Larger School Units Act* (1965), the renumbered section 51 of that *Act* (1944) referenced above, specifically provided that the inclusion of a separate district in a larger unit was "upon such terms as may be agreed upon."

Justice Tallis concluded that the school jurisdictions established under the new *Education Act* were different than the school districts established under the previous *School Act*. Section 375(h) of the *Education Act* had repealed the *School Act*. The appellant submitted that St. Walburg had not lost its legal status pursuant to rights and powers under the *Larger School Units Act*, the *School Act*, and the original amalgamation Agreement with the Turtleford School Division. Justice Tallis rejected that contention since it was inconsistent with the plain language of the legislation. "The appellant…seeks to reach back and retrieve rights and powers from predecessor statutes which have been repealed. In our opinion the appellant's argument overlooks the effect of s. 375(h) of The Education Act" (par. 5). Justice Tallis agreed with Justice Noble that the provisions of the *Education Act* statutorily divested St. Walburg of its status. "We also conclude that St. Walburg Roman Catholic Separate School District No. 25 no longer exists" (par. 7).

Justice Tallis pointed out that sections 22 to 26 of the *Education Act* (1978) specifically provided for the right of a religious minority, whether Protestant or Roman Catholic, to set up and operate their own school divisions with their own Boards of Education. It was his opinion that these provisions "give full recognition to the rights and privileges protected under s. 93 of The Constitution Act 1867 and enable religious minorities to establish a separate school division" (par. 20).

Of particular interest and perhaps of most importance to religious minorities in both Alberta and Saskatchewan is Justice Tallis' reference to the limitations of minority school rights under the *School Ordinance* of the North-West Territories (1901):

> We observe that ss. 41 to 45 of The School Ordinance of the Northwest Territories do not protect or guarantee any specific institutional structures for school education. The "protected right" is the general right to establish and maintain a school board like those provided in respect of the public school districts. *It does not guarantee a particular kind of board or educational arrangement in perpetuity* (emphasis added) (par. 18).

Reference re Education Act-Quebec (1993): *Reference re the Education Act of Quebec (1988) (Bill 107), [1993] 2 S.C.R. 511, Supreme Court of Canada.*

In the *QAPSB Case* (1985), the Quebec Association of Protestant School Boards had challenged the province's new legislation (Bill 3), intended to replace existing school boards with linguistic school boards for either anglophones or francophones. All boards would be replaced with the exceptions of the denominational Catholic and Protestant school boards of the Cities of Montreal and Quebec, whose territory would be reduced and limited to the municipal boundaries of those cities as they existed in 1867, and the five existing dissentient school boards outside of those cities, whose jurisdictions would be limited to their territory as at 1985. Justice Brossard concluded that the impugned legislation was *ultra vires* the powers of the Legislature of Quebec and null in its entirety. In 1986, a newly elected provincial government decided not to appeal the court's decision but instead developed and adopted a completely new *Education Act* (1988) (Bill 107).

Bill 107 once again provided that the Province of Quebec's public school system would move from a system organized according to religion to one organized according to language. Bill 107 proposed to divide the entire province into two groups of territories, one for French-language school boards and the other for English-language school boards. This would result in the dissolution of the existing public boards for Catholic or Protestants, excluding the four existing confessional school boards of Montreal and Quebec and the five existing dissentient school boards outside of those cities. Access to the four confessional school boards and the dissentient school boards would be restricted to persons who belong to the same religious denomination as the faith of those school boards. Bill 107 provided for the continuation of a dissent procedure for the religious minorities of Protestant or Roman Catholic outside of Montreal and Quebec. The government assumed the power to alter the territory of confessional school boards or to change the legal structures of the dissentient school boards as well as to dissolve a dissentient school board if it became inactive. Bill 107 incorporated a principle of proportional access to public funds for confessional or dissentient school boards. Although the educational structure created by Bill 107 for linguistic school boards was to be administratively neutral, individual linguistic schools may be recognized as either Roman Catholic or Protestant in accordance with an educational plan to be adopted pursuant to the new *Act*.

Bill 107 received assent on December 23, 1988, but the Quebec Legislature nonetheless decided in April 1989 to submit a list of questions to the Quebec Court of Appeal. On two occasions, in May and in June 1990, following the hearing of the appellate court, the Quebec Legislature passed statutes amending certain provisions of Bill 107, which had been at issue in the reference. The Quebec Court of Appeal decided to rule on Bill 107 as amended. On September 21, 1990, the Court of Appeal handed down its decision, which supported the majority of Bill 107's provisions as addressed in the questions at issue, but not all.

In October 1990, five appellants filed notices of appeal with the Supreme Court of Canada, our old friends, the Quebec Association of Protestant School Boards, as well as the Federation des commissions scolaires du Quebec, Commission scolaire Chomedey de Laval, Conseil scolaire de l'Ile de Montreal, and the Montreal Catholic School Commission. The Quebec Association of Protestant School Boards comprised 26 Protestant school boards. The Federation des commissions scolaires du Quebec represented its 173 member Catholic school boards. All appellants questioned the legality and the constitutionality of the provisions of Bill 107.

Before the end of the 1990 calendar year, the Quebec legislature passed two additional statutes amending the new *Education Act* (1988) to address provisions at issue at the Court of Appeal. On March 18, 1991, the Supreme Court of Canada allowed the application by the Attorney General of Quebec asking the Court to rule on the Provisions of Bill 107 as further amended.

The Supreme Court heard the case in December 1992 and Justice Gonthier delivered the court's unanimous decision on June 17, 1993. The court found that the provisions of Bill 107 at issue in the appeal did not prejudicially affect the rights and privileges protected by section 93(1) and (2) of the *Constitution Act* (1867). The sole qualification to this decision was that there should be no territorial reduction of the confessional boards within the municipal boundaries of the Cities of Montreal and Quebec unless the detached territory is served by another confessional board offering the same rights and privileges. Justice Gonthier included this reminder of the significance of section 93:

> Section 93 is unanimously recognized as the expression of a desire for political compromise. It served to moderate religious conflicts which threatened the birth of the Union. At the time, disagreements between communities hinged on religion rather than language (par. 24).

Justice Gonthier confirmed the interpretation of Justice Brossard in the *QAPSB Case* that the public common schools outside Montreal and Quebec were nonetheless denominational.

> …the 1861 Act does not prohibit denominational instruction in common schools. Nor does it prevent a school being given a denominational character. Indeed, it is for this reason that the educational system in general had a bi-denominational character in 1861, with on the one hand the majority schools, using the opportunity open to them under the Act of giving a school a denominational character, and on the other dissentient schools,…the purpose of which was precisely to be denominational schools (par. 36).

But did the fact that the 1861 *Act* did not prohibit the existence of denominational common schools for the majority constitute a constitutional entitlement? One of the appellants, the Commission scolaire Chomedey de Laval, a majority Catholic board, specifically questioned the Privy Council decision in the *Hirsch Case* (1928) when it refused to recognize constitutional guarantees for the religious majority outside Montreal and Quebec. This appellant contended that the purpose of Bill 107 was to destroy the denominational school system that took over a hundred years of effort to establish. The Supreme Court did not agree.

> Section 93 of the Constitution crystallizes the rights and privileges pertaining to denominational schools under the law in effect at the time of Confederation…in the rural areas of Quebec religious minorities alone were entitled to denominational schools, by means of dissenting rights, and that in the two major cities, Catholics and Protestants were also entitled to denominational schools, regardless of their relative numbers. In the "rural" areas, the religious majority was not entitled to any constitutional protection (par. 52).

Justice Gonthier concluded that there was nothing to prevent the provincial legislature from providing that school boards will be French-language or English-language, "since s. 93(1) and s. 93(2) make absolutely no mention of the language used by the boards and in the schools" (par. 84). The Supreme Court concluded that provisions questioned were constitutional, noting that by changing education in this way, "the Quebec government is pursuing a legitimate purpose which is in keeping with s. 23 of the Canadian Charter of Rights and Freedoms" (par. 90). The Province of Quebec could proceed with the reorganization of its school boards:

> …provided that in doing so it does not prejudicially affect the rights and guarantees set out in s. 93 of the Constitution…this means chiefly that the right to dissent must be maintained outside Quebec and Montreal and that in those two cities, Catholics and Protestants must continue to have access to denominational schools (par. 91).

The Quebec Association of Protestant School Boards expressed the concern that under the new legislation the right of the religious minority is severely curtailed. Since the majority school boards are now linguistic, anglophone Protestants will no longer be able to exercise their right to dissent unless they form a minority within the English-language board, "which would not be likely" (par. 98). A similar argument could be made for francophone Roman Catholics rarely ever being a minority within a French-language board, which was of concern to the Federation des commissions scolaires du Quebec. Justice Gonthier recognized this change, but was unsympathetic to anglophone Protestants and francophone Catholics. "In view of the purpose and reasons for the right to dissent, they will not have need of it since they will constitute the religious majority, and consequently the school board will probably meet their needs and aspirations" (par. 108). In practice, only Catholic anglophones or Protestant francophones would normally be in a position to avail themselves of the right to dissent in the new system of linguistic public school boards. Persons in these categories may be expected to be significantly less in numbers than the Protestant anglophones and Roman Catholic francophones who normally would have constituted the minorities eligible to dissent under the previous legislation.

While Justice Brossard had found the provisions for the right to dissent inadequate under Bill 103 in the *QAPSB Case*, Justice Gonthier concluded that "the basis of the right to dissent provided for by the Quebec legislature in Bill 107 does not preclude or alter its exercise and does not conflict with the constitutional protection given to religious minorities" (par. 110). Section 127 of the *Education Act* (1988) provides that it is the linguistic board that, upon receiving a written notice from the eligible Protestant or Roman Catholic minority, must enumerate its electors, if necessary to satisfy itself of the eligibility of the requesting group "so as to determine if they are Catholic or Protestant or of another religious denomination." Section 515.1 of the *Education Act* (1988) set down an important principle respecting the proper completion of such an enumeration. "Every person who refuses to respond or who cannot be contacted is deemed to be neither Catholic nor Protestant."

Justice Gonthier was not concerned that restricting access to the dissentient school boards or to the four confessional school boards to persons belonging to the same religious denomination as the faith of those school boards might offend section 93 of the *Constitution Act* (1867). The admission of students of other denominations to dissentient schools "was not a necessary factor to the effectiveness of the constitutional guarantees and was not related thereto" (par. 134). The special provisions for the Cities of Quebec and Montreal are not based on a requirement for dissent. As common schools, they provided access to school for all sectors of the population but this did not broaden the denominational privilege. "We are dealing with access to a service which was not related to the rights of a class of persons" (par. 167). But section 206 of the *Education Act* (1988) provided an important distinction for persons of the same religious faith as the confessional or dissentient school boards. "Only those persons who belong to the same religious denomination as that of a confessional or dissentient school board *and who elect to come under the jurisdiction of the school board* come under the jurisdiction of that school board." Persons of the faith of the confessional or dissentient school boards have a choice to remain under the jurisdiction of the linguistic school board. This is consistent with Ontario where members of the minority faith have the choice to remain under the jurisdiction of the public school authority. This element of choice for the minority faith residents is not found in Alberta and Saskatchewan where, if a separate school authority has been established, all persons of the faith of that authority are deemed residents of the separate school authority.

Section 137 of the *Education Act* (1988) gave the provincial government the power to amalgamate dissentient school boards, divide the territory of any dissentient school board, or annex part of the territory from one dissentient school to another. Justice Gonthier concluded:

> It must be noted that the Constitution provides no guarantee that existing instutitions or vested rights will be maintained. Consequently, reform of the educational system is possible, with the transitional inconvenience involved in any major institutional reorganization. However, such inconvenience must not make the effective exercise of the right to dissent impracticable or have a serious adverse effect on it (par. 118)...the Constitution guarantees the right to dissent per se, not to certain legal institutions through which it may be exercised. The legislature can therefore alter them without infringing the constitutional protections (par. 127).

As previously noted above, Justice Gonthier had the following to say about changing the boundaries of the confessional boards in the Cities of Montreal and Quebec:

> The new provisions authorizing the government to alter the territories of the confessional school boards are valid to the extent that they do not reduce the limits to be less than those of the municipal corporations of Quebec and Montreal or provided the changes do not prejudicially affect the constitutional rights and privileges of Catholic and Protestants residing in the territory of either municipality. Such a reduction of territory beyond these municipal boundaries could thus not take place unless the territory thus separated is served by a confessional school board offering the same rights and privileges (par. 162).

In the 1861 *Act*, the property taxing authority in Montreal and Quebec was given to the municipal corporations, not the school boards. Bill 107 authorizes the Conseil scolaire de l'Ile de Montreal to establish rules for apportioning the proceeds of the tax it collects on the Island of Montreal on behalf of that city's confessional school boards. Justice Gonthier concluded that the legislature can transfer the taxing authority to the Conseil from the municipal corporation without infringing the Constitution, since the confessional school boards never did have direct taxing authority. It was noted that section 439 of Bill 107 guaranteed fair and proportional access to school taxes. Justice Gonthier speculated that if a dissentient school board were created adjacent to the City of Montreal, such a dissentient school board could potentially extend onto the Island of Montreal (through a reduction in the territory of the confessional boards or otherwise) and become subject to the taxing authority of the Conseil, where the dissentient board would otherwise ordinarily have the right to collect its own taxes. In response to this issue, Justice Gonthier had an important principal to impart concerning the potential loss of taxing power by dissentient school boards:

> …fundamentally what matters is having the financial and physical resources to operate school boards. The taxing power is only one possible means of attaining this end. If it can be done otherwise, such as by an equal, or at least appropriate and equitable, allocation of financing sources, it is hard to speak of a prejudicial effect (par. 199).

What the Province of Quebec had failed to achieve with Bill 103, they accomplished with Bill 107. A school system based on religious distinction, which predated Confederation, was replaced with one based on linguistic distinction, while maintaining the constitutionally protected right of the Protestant or Roman Catholic minority to dissent.

> As one could have anticipated, the QAPSB had argued that the conclusions regarding section 93(1) reached in *Reference re Bill 30* and *Greater Montreal* were contradictory and that the latter should be overturned. This argument, however meritorious, does not even find a rebuttal in the decision delivered by Gonthier J…*Reference re Bill 107* put to rest forever the belief that section 93 was intended to protect school boards as the structural expression of denominational rights…school boards are "creatures of statute" and what the government has created, it may modify or eliminate. Section 93 rights do not protect broad powers of management and control, even if school boards exercised such powers prior to Confederation, as such powers exceed, according to the courts, those which are strictly necessary to protect denominational rights (Smith and Foster, 2001, March: pp. 442, 443).

The Jacobi Case (1994): *Jacobi v. Newell (County No. 4), [1994] A.J. No. 125, Alberta Court of Queen's Bench.*

Prior to the significant restructuring of Alberta's system of governing and funding school jurisdictions in the mid 1990s, the County of Newell No. 4 in southeastern Alberta provided for public schooling within its boundaries with the exception of Brooks School District No. 2092, which served as an autonomous public school jurisdiction and included the Town of Brooks. In 1985, Ken and Mary Jacobi and their five children, all under the age of 15 years, became residents of the County of Newell. They located in the southern portion of the county near the Hamlet of Rolling Hills and their school age children attended Rolling Hills School, which offered an educational program for Grades 1 through 9. The majority of parents in the vicinity of Rolling Hills sent their high school students to the high school in the Town of Brooks. There were no separate school jurisdictions in the County of Newell or the Brooks School District at that time.

Brooks School District had sufficient facilities to accommodate non-resident students. For some period of time, the Brooks School District accepted for enrolment, in addition to county high school students, the elementary school students of a number of residents of the county. This was done pursuant to an agreement made under section 46(1)(b) of the *School Act* (1988), which provided that "a board may, without the approval of the Minister, with respect to its resident students, enter into an agreement with another board or person to provide educational programs." The County of Newell paid tuition fees and transportation costs to the Brooks School District for county students attending schools in the Brooks School District. This was a popular alternative for parents of students within a reasonable bussing distance from the Town of Brooks, since schools in the town were larger and offered more varied program choices than rural county schools.

On May 28, 1990, the Board of Education for the County of Newell, concerned with the issue of declining enrolments in its rural schools, passed a resolution "that we direct County resident students, who are residing outside the Brooks School District boundaries, to County schools" (par. 16). Effective January 1, 1992, the County of Newell would terminate its policy of funding the attendance of its resident elementary school students at schools operated by the Brooks School District. That decision precipitated a most interesting series of events. Many residents of the county were disappointed with the county's decision and "wished to continue sending their children to school in Brooks without cost" (par. 16). Particularly upset were parents west of Brooks who no longer had a nearby county school, whose students had been attending schools in Brooks, and whose students were now to be directed to Tilley School in the Village of Tilley, east of Brooks. Students from west of Brooks were to be bussed through Brooks, past the schools they had been attending, to a village school the other side of Brooks.

Roman Catholic minority residents west of Brooks began a concerted effort to form separate school districts. With their own school board, they argued they could once again enter into an educational services agreement with the Brooks School District and their students could return to their schools of choice in Brooks. This movement was quite successful resulting in a number of Roman Catholic separate districts being established west and south of Brooks. For example, on February 7, 1991, the Minister of Education established Aqueduct Roman Catholic Separate School District No. 374, and on May 10, 1991, East Rolling Hills Roman Catholic Separate School District No. 386 was established. On August 18, 1991, the Minister amalgamated fifteen Roman Catholic separate school districts within the County of Newell, including The East Rolling Hills Separate District, into the Aqueduct Separate School District. On September 9, 1991, the Aqueduct separate school board appointed the Superintendent and Secretary-Treasurer of the Brooks School District to serve in those same capacities for the Aqueduct Separate District. Aqueduct Separate District concluded an agreement dated July 13, 1992 with the Brooks School District pursuant to section 46(1) of the *School Act* (1988). The Brooks School District became responsible for almost all of the administrative functions incidental to the operation of the Aqueduct Separate School District. For the 1992-93 school year, 163 students from the Aqueduct Separate District attended schools operated by the Brooks School District.

Ken and Mary Jacobi were of the Roman Catholic faith and found themselves, pursuant to section 207(6) of the *School Act* (1988), first residents of East Rolling Hills Separate District and then Aqueduct Separate District following the amalgamation. Section 207(6) provided that:

> …after a separate school district is established, a person residing within the boundaries of the separate school district who is of the same faith as those who established that district, whether Protestant or Roman Catholic, is a resident of the separate school district and is not a resident of the public school district.

The Jacobis wished to continue sending their children to the Rolling Hills public school and did not wish to have their property liable for assessment for the support of the Aqueduct Separate School District. On August 6, 1991, the Jacobis wrote to the County of Newell requesting that their tax dollars remain with the county and that their five children continue to attend Rolling Hills School. The county's letter of reply dated November 12, 1991, advised the Jacobis that it was "unable to comply with your request of August 6, 1991" (par. 27).

The Jacobi children continued to attend the Rolling Hills public school and the County of Newell presented the Jacobis with monthly statements of account charging them non-resident tuition fees of $259.99 for each of their children, commencing with the month of January 1992. This non-resident fee equated to $2,599.90 per student per annum for a ten-month school year. The Jacobis had turned to the Aqueduct Separate District to pay the non-resident tuition fees for their students to the County of Newell so that their students could continue to attend Rolling Hills School. In a letter dated January 10, 1992, the Aqueduct Separate District advised the Jacobis that "the Board agrees to support tuition fees for your children to the same level of support as we pay to educate those Aqueduct students who have been directed to attend the Brooks School District Schools" (par. 30). In letters dated March 3 and March 31, 1992, the Aqueduct Separate District further advised the Jacobis that it would, on proof of payment, reimburse them for tuition fees paid in the amount of $1,538.55 per annum per student plus the net average cost per student of $114.00 for transporting each Aqueduct student to Brooks. The maximum annual amount per student payable by Aqueduct would therefore have been $1,652.55, the same amount paid by Aqueduct per student to attend Brooks School District but $947.35 per student less than the amount charged by the County of Newell.

In accordance with section 32(2) of the *School Act* (1988), boards may charge non-resident tuition fees, but under section 32(3), "A tuition fee charged under subsection (2) shall not exceed the amount of the net average local cost per student of maintaining the education program in which the individual is enrolled." The net average local cost per student for a board was defined by and limited by the value of its local supplementary requisition per resident student on its property assessment. In 1991, the County of Newell raised $2,730 in supplementary requisition per resident student compared to $1,746 for the Brooks School District (Alberta Education, 1991b). Part II of this thesis will explore in detail the reasons for these disparities. For the present discussion, not only was Aqueduct Separate District able to accommodate the wish of the vast majority of its resident parents to send their students to Brooks, it also cost significantly less to direct its resident students to schools in Brooks than to county schools.

Ken and Mary Jacobi next did three things. In May 1992, they sold their house and property near Rolling Hills, commenced an action against both the County of Newell and the Aqueduct Separate School District in Court of Queen's Bench, and on or about June 30, 1992 at the end of the school year, moved to the Province of Saskatchewan. The Jabobi's Statement of Claim challenged the tuition fees and raised a number of other issues. On July 7, 1992, the Aqueduct Separate District asked the Court for an Order striking out the Statement of Claim on the grounds that the issues raised were moot in that the plaintiffs had no standing to maintain the action, having moved to Saskatchewan. On October 29, 1992, Justice Montgomery ruled that the plaintiffs had not, by virtue of selling their land and moving from Alberta, lost their standing to prosecute the claim nor had the issues raised become moot for that reason. That ruling was not appealed. On January 5, 1993, the County of Newell cancelled all non-resident tuition fees assessed to the Jacobis for their children attending the Rolling Hills School for the period January 1 to June 30, 1992.

Justice O'Leary delivered his decision on the primary action January 31, 1994. Justice O'Leary addressed the issue that the number of separate districts that made up the amalgamated Aqueduct Separate School District had been established for purposes other than to access a Roman Catholic education.

> Before proceeding further I will deal with the suggestion that the formation of the Aqueduct Separate School District was merely a subterfuge to allow some Roman Catholic parents living in the County of Newell who were previously sending their children to school in Brooks without charge to continue doing so. There is no direct evidence of the motive of the majority of Roman Catholic electors who voted to form the new district. I do not consider it open to me to draw an inference of bad faith…In these circumstances it must be assumed that the

> majority of the Roman Catholic electors who voted in favour of forming the Aqueduct Separate School District did so bona fide pursuant to their guaranteed rights and privileges (par. 57).

Justice O'Leary's reluctance to question the motives of those electors who form a separate district parallels the position of Justice McDonald of the Alberta Court of Queen's Bench in the *Starland Case* (1988), who stated that it would be repugnant and a serious invasion of religious freedom to question whether the religious faith of electors was other than as they had declared it to be. While Justice O'Leary may have concluded that there was no direct evidence of the motive of the Roman Catholic electors and that they accordingly must be assumed to have acted in good faith, he went on to enumerate the overwhelming evidence to the contrary relative to the operation of the Aqueduct Separate District.

> There is nothing of a denominational nature in the program of education offered to its resident students. No formal religious education is provided and no means of promoting or preserving Roman Catholic beliefs and values have been instituted. There is no indication of any plan to develop a distinct program in the near future or, indeed, at all. Whatever motives inspired the majority of Roman Catholic electors to form the Aqueduct Separate School District, the effect has been to merely substitute one public school education program for another, while at the same time depriving the County of Newell of a portion of its school tax base (par. 71).

Justice O'Leary made specific reference to section 41 of the *School Ordinance* (1901) of the North-West Territories:

> The Minority of the ratepayers in any district whether Protestant or Roman Catholic may establish a separate school therein; and in such case the ratepayers establishing such Protestant or Roman Catholic separate school shall be liable only to assessments of such rates as they impose upon themselves in respect thereof.

Justice O'Leary specifically emphasized the right given to the minority ratepayers in any district was "the right to establish separate schools" (par. 58). There was both good news and bad news in Justice O'Leary's adjudication of the Aqueduct Separate district situation. First, the good news:

> A separate school district does not compromise its protection under the Constitution because it does not own or lease a building or place within the district or elsewhere devoted to the education of its students…The School Act

> anticipates that the trustees of a separate school district may find it convenient or necessary to contract with another school district for the use of school facilities…In my view, the provisions permitting such agreements are valid and are not inconsistent with the operation of a "separate school" (par. 66).

Then, the bad news:

> The constitutional protection accorded to separate denominational schools does not protect a separate school district which provides a public school education and does not purport to protect religious values (par. 51)…
>
> I accept the plaintiffs' submission that, in the absence of the constitutional guarantee with respect to minority separate schools, state support for Protestant or Roman Catholic separate schools would be unlawful as a violation of either or both of ss. 2(a) and 15(1) of the Charter, and either or both of Clauses 1(b) and (c) of the Alberta Bill of Rights (par. 53)…
>
> In my view, in order for a Roman Catholic separate school district to qualify as a "separate school" within the meaning of s. 41 of the School Ordinance, and thus be protected by the Constitution, it must have some degree of denominational character. It cannot simply operate a public school by another name. There must be something distinctive in the program offered or in the manner in which it is presented (par. 70). The Aqueduct Defendants do not, in my opinion, operate a "separate school" (par. 71)…

These findings lead Justice O'Leary to the following pivotal decisions:

> The effect of this ruling is to deprive the Aqueduct Defendants of status. They have no right to exercise any of the powers or receive any of the benefits to which separate school boards are entitled under the School Act (par. 76). It follows that the adult Plaintiffs are not obliged to direct their property taxes to the support of the Aqueduct Separate School District, nor are they bound to send their children to the school directed by the Aqueduct Defendants or to pay non-resident fees to the County of Newell (par. 77)…
>
> In order to avoid unnecessary disruption and to give the Aqueduct Defendants a reasonable opportunity to establish a separate school, I suspend the operation of this judgment until September 1, 1994 (par. 78)..

Justice O'Leary gave Aqueduct seven months grace to establish a separate school. In reality, the separate district was sending enough resident students to Brooks School District to maintain a viable separate school for Grades 1 to 9. At least partially due to significant legislative changes introduced by the province in early 1994, reviewed in Chapter Nine, the Board of Trustees of Aqueduct Separate District chose instead to pass a resolution pursuant to section 208 of the *School Act* (1988) requesting the Minister to dissolve the separate district effective August 31, 1994, which was accommodated.

Key Findings

This set of judicial decisions has added the following key findings that have relevance for the separate school system in Alberta today. They further assist our understanding of the scope of decision making power of the provincial government with respect to its responsibility for issues of governance of Alberta's separate schools and specifically as it relates to a province's ability to alter the geographic territory or boundaries of a separate school jurisdiction, the court's limitation on the legal status of a separate jurisdiction, or its right to exist.

1. *A Roman Catholic school constitutes a whole in which each facet must reflect Christian and Catholic values and it constitutes a privileged place of religious instruction. In contrast, a Protestant school is pluralist, resulting from the many Protestant denominations arising from numerous and varied origins, and religious instruction is generally disassociated from other subjects in order to respect the freedom of individual conscience (QAPSB).*
2. *The necessity of maintaining a Protestant minority school may be more to prevent students of the Protestant faith from finding themselves in a school controlled by a Catholic majority than the furtherance of Protestant religious teachings (QAPSB).*
3. *It is the minority faith electors, whether Roman Catholic or Protestant, who have protected rights under section 93 of the* Constitution Act *(1867) and not the majority faith electors (QAPSB, Reference re Education Act-Que. [reinforcing the principle found in Gratton, Hirsch, Calgary Public]).*
4. *A separate district that enters into an agreement to become part of some larger governing unit that does not have separate district status may lose its right to exist as an autonomous separate jurisdiction but not the right of the minority faith electors to dissent (QAPSB, St. Walburg, Reference re Education Act-Que.).*
5. *The provincial government is able to redefine the historic boundaries of school districts within school divisions according to some new criteria such as student*

attendance areas without infringing on the constitutional protections of the minority faith electors within those school districts (St. Walburg).

6. *The minority religious education rights protected by section 93 of the* Constitution Act *(1867) do not guarantee a particular kind of board, educational arrangement, or governing institution in perpetuity. The Constitution guarantees the right to dissent, not to certain legal institutions. A provincial legislature can alter them without infringing on the constitutional protections (St. Walburg, Reference Education Act-Que.).*
7. *A provincial government has the power to amalgamate separate school jurisdictions, divide the territory of any separate school jurisdiction, or annex part of the territory from one separate school jurisdiction to another without infringing on the constitutional protections (Reference Education Act-Que.).*
8. *There is nothing to prevent a provincial legislature from reorganizing its public schools to include schools conducted in a specific language. French-language schools are in keeping with the purpose of section 23 of the* Charter of Rights and Freedoms. *Such reorganization can go ahead providing that it does not prejudicially affect minority religious education rights protected by section 93 of the* Constitution Act *(1867) (Reference re Education Act-Que.).*
9. *In enumerating electors in a district to determine eligibility of the Roman Catholic or Protestant minority to establish a separate district, it is determined if electors are Roman Catholic, Protestant, or neither Roman Catholic nor Protestant. Every person who refuses to respond or who cannot be contacted is deemed to be neither Roman Catholic nor Protestant (Reference re Education Act-Que.).*
10. *A separate school district being able to accept students whose parents are not of the faith of the separate district is not a denominational right or privilege protected under the Constitution. There is nothing to prevent a province, if it chooses to do so, from restricting the attendance in schools operated by separate districts to students whose parents are of the faith of the separate district (Reference re Education Act-Que.).*
11. *Regarding a separate district's right to tax its ratepayers, fundamentally what matters is having the financial and physical resources to operate school boards. The*

taxing power is only one possible means of attaining this end. If it can be done otherwise, such as by an equal, or at least appropriate and equitable, allocation of financing sources, it is hard to speak of a prejudicial effect (Reference re Education Act-Que.).

12. *It is not appropriate for the courts to question the motives of the minority electors who establish a separate district. It must be assumed that the majority of the minority electors who voted in favour of the formation acted in good faith pursuant to their constitutionally protected rights and privileges (Jacobi).*
13. *The* School Ordinance *(1901) of the North-West Territories defines the right of minority ratepayers in any district to "establish a separate school therein." The constitutional protection accorded separate schools does not protect a separate school district that provides a public school education and does not have some distinctive denominational character in the program offered or in the manner in which it is presented (Jacobi).*

PART II

FUNDING AND SEPARATE SCHOOLS IN ALBERTA:

A Review of the Initiatives to Bring Equity to School Funding And the Resulting Impact on the Finance of Separate Schools in Alberta

CHAPTER SIX

THE SCHOOL FOUNDATION PROGRAM FUND *and* A REVIEW OF FISCAL EQUALIZATION IN 1973

Introduction

From the beginnings of our province in 1905 through to the introduction of the School Foundation Program Fund (SFPF) in 1961, locally levied property taxes were the primary source of funding for the school jurisdictions of Alberta. The provincial share of the revenue for rural school districts in 1905, on average, was 27 percent while 68 percent came from property taxes. By 1925, the provincial revenue share for rural school districts had declined to just 14 percent with 84 percent coming from property taxes (Sparby, 1958). By 1950, the provincial share of funding for all school jurisdictions was 27 percent, and by 1960 had increased to 44.4 percent (Darby, 1993). With the introduction of the SFPF a year later, the provincial share peaked at 92.3 percent in 1961 with a mere 5.4 percent coming from property taxes (Alberta Education, 1987).

The Report of the Minister's Advisory Committee on School Finance in 1975 gave as an objective of a provincial educational finance plan the equalization of educational opportunity, which the committee defined as "...equality of access of students to programs and services rather than equality of outcomes. Equality of educational opportunity does not necessarily mean equality of results" (p. 4). There is a basic assumption that differences in educational expenditures among school jurisdictions are a measure of the differences in the quality of educational programs, although this ignores other jurisdictional variables such as population density or school size (Bumbarger and Ratsoy, 1975).

The concept of equalization is derived from the principal of fiscal neutrality, which states, "Disequalization increases as the distribution of revenues or expenditures departs from a position of fiscal neutrality" (Deiseach, 1974: p. 21). Fiscal neutrality simply means that the opportunity to learn is not effected by the fiscal resources of the school jurisdiction but only by the resources of the province (Darby, 1993); "...equality of educational opportunity for all children requires at least equality of resources" (Jefferson, 1982: p. 16).

Educational funding from the provincial government is and must be based on the concept of equal treatment of equals and unequal treatment of unequals. Provincial funding programs apply the same to each school jurisdiction and ideally address the differences in the cost of program delivery faced by each jurisdiction. To the extent that the revenue of school jurisdictions is dependent on locally levied property taxes, inequities in the program opportunities available to students are introduced based on variances among jurisdictions in the assessed values of property on a per student basis. As industrial development increased, the location of that industry became a fortunate opportunity for local school jurisdictions to raise revenues. "The quality of education for students in Alberta should not depend on the chance location of industry" (Darby, 1993: p. 140).

The introduction by the provincial government of the School Foundation Program Fund in 1961, the Supplementary Requisition Equalization Grant (SREG) in 1975, and the Equity Grant in 1985 had as their fundamental purpose the achievement of, or at least improvement in, fiscal equity among school jurisdictions. Despite these efforts on the part of the province, the proportion of revenues for school jurisdictions coming from the local property tax base grew from the 5.4 percent in 1961 to 36.8 percent in 1992-93 (Alberta Education, 1994a). Increasing the proportion of school funding derived from local property taxes "is the single, most significant force for fiscal disequalization for Alberta schools" (Schmidt, 1988: p. 137).

In 1994, the Government of Alberta assumed responsibility for the local property tax base and for the resultant full funding of school jurisdictions. This was done to address the issues of fiscal inequities among school jurisdictions, to control the inflationary cost of education and property taxes, and to compel school boards to live within the resources available from the province.

Scope of this Review

The year 1993 was the last in which school jurisdictions had unencumbered access to requisitioning the local property tax base. It provides a pivotal point at which to measure the degree of fiscal equalization among Alberta's school Jurisdictions. This review addressed that climactic point. But first, it went back in decade steps to 1983 and

1973. The year 1973 provided a measure of the matured impact of the introduction of the School Foundation Program Fund in 1961. The year 1983 provided a measure of the matured impact of the Supplementary Requisition Equalization Grant (SREG) introduced in 1975, as well as other less significant grants introduced to assist with the fiscal equity of school jurisdictions. The year 1993 then provided a measure of the matured impact of the Equity Grant introduced in 1985, which replaced previous grants directed at the issue of fiscal equity.

In each of the years 1973, 1983, and 1993, comparisons were made among school jurisdictions of the three measures of fiscal equity: equalized assessment per student, mill rates, and supplementary requisition per student. These gave a measure of how much resource was accessible, how much local effort was made, and how much revenue resulted. Equalized assessment figures were calculated by Alberta Municipal Affairs to make comparable valuations from actual municipal assessments of varying ages. For 1983 and 1993, a comparison was made of the impact of the fiscal equalization grants measured in relation to the equalized assessment per student. For 1973, 1983, and 1993, a comparison was made of the actual instructional expenditures per student, Grades 1 to 12, to determine the relationship between locally available fiscal capacity, as supplemented by equalization grants, and the resulting investment in students in the classroom.

School jurisdictions were grouped for comparison purposes. First, public jurisdictions were compared to separate jurisdictions in Alberta's eight largest cities: Calgary, Edmonton, Fort McMurray, Grande Prairie, Lethbridge, Medicine Hat, Red Deer, and St. Albert. Comparisons were then made of all other public and separate jurisdictions, *which actually operated one or more schools*, in each of Alberta's six educational zones. A provincial aggregation was made for the comparison of public and separate jurisdictions.

For 1973, 1983, and 1993, the comparison of public and separate jurisdictions was then focused to just those public jurisdictions which had separate jurisdictions within their boundaries. This provided the actual fiscal equity comparisons between the public and separate jurisdictions that provided services within the same communities. These comparisons were grouped for school divisions, counties, and school districts that contained separate jurisdictions.

The year 1973 is examined in the balance of this chapter. The years 1983 and 1993 are reviewed in the two subsequent chapters of *Part II.* It is noted that the term *student* was introduced with reference to those attending Grades 1 to 12 with the *School Act* (1988) and has been in consistent use in most references thereafter. In earlier versions of the *School Act*, the term *pupil* was used and consequently appears in most earlier references. For the purpose of this review, the term student was used consistently, unless quoting from another reference.

School Foundation Program Fund

The School Foundation Program Fund (SFPF) was introduced in 1961 following the recommendations of the Report of the Royal Commission on Education in Alberta, known as the Cameron Commission, in 1959 (Deiseach, 1974). The purpose of the SFPF was to provide local school jurisdictions with support for a basic minimum level of educational program regardless of the fiscal ability they possessed to raise revenue from the local assessment base (Jefferson, 1982). Revenues for the SFPF came from two sources: a provincial levy on all property assessment and provincial general revenues. In its first year of the SFPF, 1961, the province paid 44.9 percent of school jurisdiction funding from the SFPF levy and 47.4 percent from provincial general revenues, which comprised the total funding of 92.3 percent previously noted (Alberta Education, 1987).

Early SFPF Development

Under the School Foundation Program Fund (SFPF) between 1961 and 1969, grants were paid to school jurisdictions using formulas that incorporated cost factors. The primary cost factors determining instruction funding were the number of students and the number of teachers. The amount paid per student was varied by Grades 1 to 6, 7 to 9 and 10 to 12 while the amount per teacher was varied by years of training. Funding teachers in this way was intended as an incentive to encourage school boards to hire more highly trained staff and to encourage teachers to upgrade their qualifications. In reality, school boards could qualify for a higher level of funding by simply hiring more teachers and reducing their student-teacher ratio or by hiring more highly trained and experienced teachers and increasing their average teacher salary. To the extent that more qualified teachers migrated to the cities, the SFPF produced an increase in the qualifications of teachers in the city jurisdictions in comparison to non-city jurisdictions (Deiseach, 1974: pp. 26, 29).

In 1970, the School Foundation Program Fund (SFPF) was revised. Sharply rising costs, particularly in the years 1965 to 1969 had required increasing amounts of provincial contribution. The major local funding change for 1970 was the Requisition Limit Regulation. The amount of money a school board could raise through the local requisition was held at the 1969 level plus an escalation factor, which was 6 percent for 1971 and 1972 (Dieseach, 1974: p. 33) and 7.5 percent for 1973, 1974 and initially 1975 (Milne, 1982: p. 33). The objective was to limit a school board's use of growing property assessment values for discretionary revenues (Dieseach, 1974). A school board desirous of requisitioning beyond the allowable limit was required to conduct a plebiscite. All four plebiscites held in the years 1970 through 1972 were defeated (Milne, 1982: p. 33).

In 1973, the plebiscite mechanism was dropped. A school board could pass a bylaw to levy a stated amount above the allowable. Of 20 bylaws passed, none were challenged. Also a board could request a budget review for the purpose of increasing the amount of local requisition. Forty-eight school jurisdictions requested such a review and 47 resulted in increases beyond the allowable limit (Milne, 1982: p. 34).

The major provincial funding change for 1970 was in the calculation of instruction support. Gone was the funding per student and per teacher. For the three years 1970 to 1972, the primary source of instruction funding was by classroom unit (CRU). A CRU was defined as 26 students. The total number of students in each jurisdiction, regardless of size, was divided by 26 to arrive at the number of CRU's. A grant rate was paid for each CRU varied by factors of 1.0 for Grades 1 to 6, 1.2 for 7 to 9 and 1.8 for 10 to 12. If the remainder in this calculation exceeded 13 a further half unit was paid, but no funding was paid for a remainder less the 13. The loss of revenue for the residual number of students was marginally more significant for smaller jurisdictions. Beginning in 1973, the provincial government changed to the method of allocating instruction grants on a per weighted student basis, eliminating the CRU concept (Deiseach, 1974: pp. 31, 32, 86).

1973 Review of Equalization

Section 136 of the *School Act* (1970) required a school board to "accept in its schools every pupil whose parents reside in its district or division" or direct the student to a school of another board and pay all consequent fees. Any comparison of assessments and requisitions was thus appropriately made on a per resident student basis since a board was legally required to provide an education for its resident students. However, the comparison of instruction expenditures was made on the basis of the number of students served; therefore enrolled student counts were used.

Alberta Education first began collecting resident student counts in about 1979, following amendments to the *School Act* in 1978, 1979, and 1980. These amendments required the splitting of municipal and provincial "grants in lieu of taxes" and undeclared corporate assessment between public and separate jurisdictions in proportion to the resident student counts of the coterminous public and separate districts containing the assessment. For 1973, the number of enrolled students was used as a proxy for the unavailable resident student numbers in comparing assessments and requisitions.

For the 1973 review, Grades 1 to 12 enrolled student counts for September 30, 1973, were referenced in the Alberta Education's Annual Report for 1974 (Alberta Education, 1974a). Assessment, requisition and instruction expenditure amounts for 1973 were found in the Supplement to the Annual Report for 1974 (Alberta Education, 1974b). It is noted that in all references, mill rates were expressed to two decimal places.

Eight Largest Urban Centres. A comparison of equalized assessments per enrolled student, equalized mill rates, supplementary requisitions and total instruction expenditures per enrolled student for public and separate jurisdictions in Alberta's eight largest urban centres for 1973 is found in Appendix A-1.

Among the eight largest urban jurisdictions, the larger urban jurisdictions generally had an advantage over smaller urban jurisdictions and public urban jurisdictions had an advantage over separate urban jurisdictions in the level of equalized assessment available, the level of supplementary requisition produced, and the amount invested in instruction.

The weighted average equalized assessment per enrolled student for the eight public jurisdictions was $11,710. This is calculated by dividing the total equalized assessment for the eight by the total number of enrolled students for the eight. A weighted average is thus influenced most by the larger jurisdictions with the greater number of students and provides the average for the grouping as a whole. The weighted average for the eight public jurisdictions was 23.5 percent greater than the mean average at $9,383. The mean average is calculated by adding together the eight different per student assessment figures and dividing that total by the number of jurisdictions. A mean average thus gives the measure for each jurisdiction equal weight regardless of jurisdiction size. The fact that the weighted average was greater than the mean average tells us that the larger public urban jurisdictions generally were advantaged in assessment over the smaller urban jurisdictions. Had the mean average been larger, the smaller jurisdictions would have been advantaged. For 1973, Edmonton and Calgary public jurisdictions were wealthier than five of the others, Fort McMurray was the exception.

The weighted average equalized assessment per enrolled student for the eight separate jurisdictions was $7,796. The corresponding reference for the eight publics was 50.2 percent greater. The weighted average was 34.9 percent greater than the mean average at $5,780. Edmonton and Calgary separate jurisdictions were, like their public counterparts, wealthier than five of the others, Lethbridge was the exception. The weighted average for the eight publics was 24.8 percent greater than the provincial weighted average for all jurisdictions at $9,383. That provincial average was in turn 20.4 percent greater than the average for the eight separate jurisdictions.

It must be noted that Edmonton public at $14,107 was 33.1 percent greater than Calgary public at $10,601; this is indicative of the initial location of the majority of the industrial development to that time. The comparatively greater wealth of Edmonton separate over Calgary separate was even more dramatic; Edmonton separate at $9,901 was 64.3 percent greater than Calgary separate at $6,027.

Two other anomalies are worthy of note. First, the weighted equalized assessment per enrolled student for Fort McMurray public at $12,400 was an amazing

300.1 percent greater than Fort McMurray separate at $3,099. Second, we note evidence of a governance anomaly. The enrolment for St. Albert Protestant separate at 3,394 was 52.0 percent greater than St. Albert public at 2,233. This is perhaps indicative that the Protestant separate jurisdiction may have been functioning as the quasi-public jurisdiction attracting the majority of the students who were not Roman Catholic while the public board was functioning as the quasi-separate board attracting few students who were not Roman Catholic. It may also be indicative that those of the Protestant faith were no longer the minority as early as 1973.

With respect to mill rates applied to equalized assessment, both the large urban public jurisdictions at 14.62 and separate jurisdictions at 15.82 had higher weighted average mill rates than the provincial weighted average of 14.41. This is consistent with the findings of Dieseach. In both 1966 and 1969 the tax levy represented a smaller proportion of personal income in the five largest cities than in the rest of the province suggesting that the tax burden in the cities, from an ability to pay perspective, was relatively smaller (Dieseach, 1974). Urban centres could generally afford higher mill rates.

Five of the eight urban centres (Calgary, Edmonton, Fort McMurray, Lethbridge, and St. Albert) had both public and separate mill rates that were the same or nearly the same. This was highly desirable politically. It was a brave school board that set a mill rate noticeably higher than its sister board in that community. Grande Prairie separate set a mill rate of 16.89, 18.3 percent higher than Grande Prairie public at 14.28 to partially address the fact that the public's assessment per enrolled student at $6,676 was 46.6 percent greater than the separate at $4,554. Medicine Hat separate set a mill rate of 19.34, a more cautious 4.5 percent higher than Medicine Hat public at 18.51 to minimally address the fact that the public's assessment per enrolled student at $8,801 was a heavy 73.8 percent greater than the separate at $5,063. If we remind ourselves that the provincial weighted average mill rate was 14.41 and the provincial weighted average assessment per enrolled student was $9,383, we realize that all four jurisdictions were functioning at a disadvantage. The disadvantage for the separate boards was greater.

Red Deer was the anomaly here. The public jurisdiction set a mill rate of 15.42, 11.9 percent greater than the separate jurisdiction at 13.78, despite the fact that the public's assessment per enrolled student at $8,516 was already 104.6 percent greater than for the separate at $4,163. This resulted in the public jurisdiction receiving a supplementary requisition per enrolled student of $131, which was 130.0 percent greater than the separate jurisdiction at $57. Was the Red Deer public board being particularly greedy in 1973? It is a more probable speculation that the public board was prepared to put an above average mill rate on a below average assessment in order to get closer to the provincial average requisition per enrolled student of $135.

Looking further at the supplementary requisition per enrolled student, we note inequities among both the publics and separates. Calgary public levied a mill rate of 15.60, 16.3 percent greater than Edmonton public at 13.41, and raised $165 in requisition per enrolled student. Edmonton public still raised $189 per enrolled student, 14.5 percent greater than Calgary public, although both public metro boards raised above the provincial weighted average of $135. Calgary separate levied a mill rate of 15.75, 17.4 percent greater than Edmonton separate at 13.42, and raised $95 per enrolled student. Edmonton separate raised $133 per enrolled student, 40.0 percent greater than Calgary separate. Both separate metro boards raised below the provincial weighted average, although Edmonton was almost there.

The weighted average requisition per enrolled student for the eight public urban jurisdictions was $171, 26.7 percent greater than the provincial weighted average. The weighted average for the eight separate urban jurisdictions was $114; the provincial weighted average was 18.4 percent greater while the weighted average for the eight publics was 50.0 percent greater.

Edmonton public's measure of assessment was 33.1 percent greater and its measure of requisition was 14.5 percent greater than Calgary public despite Calgary public carrying a 16.3 percent greater burden in its mill rate. Edmonton public invested $759 in instruction expenditures per enrolled student, 2.7 percent greater than Calgary public at $739. Edmonton separate's measure of assessment was 64.3 percent greater and its measure of requisition was 40.0 percent greater than Calgary separate despite Calgary separate carrying a 17.4 percent greater burden in its mill rate. Edmonton separate invested $710 in instruction expenditures per enrolled student, 7.1 percent greater than Calgary separate at $663.

The weighted average instruction expenditure per enrolled student for the eight public jurisdictions was $742, 5.0 percent greater than their mean average. The weighted average for the eight separate jurisdictions was $675, 8.9 percent greater than their mean average. These references reinforce the advantage of the larger urban jurisdictions over the smaller urban jurisdictions. The weighted average for the eight public jurisdictions was 5.8 percent greater than the provincial weighted average at $701 and 9.9 percent greater than the weighted average for the eight separate jurisdictions. In each of the eight urban centres, the public jurisdiction was able to invest more in instruction expenditures per enrolled student than the separate jurisdiction.

Public Rural Jurisdictions. A comparison of equalized assessments per enrolled student, equalized mill rates, supplementary requisitions and instruction expenditures per enrolled student for all public jurisdictions operating one or more schools for 1973, excluding the eight largest urban centres, is found in Appendix A-2. The 84 public rural jurisdictions operating one or more schools varied greatly in size from Seebe School District with 15 enrolled students to County of Strathcona with 10,523.

The public jurisdictions are grouped into six geographical zones. These zones were initially established by the then Alberta School Trustees' Association to divide the provincial association into regions for working sessions and professional development activities. These zones continue to function today. Zone 1 comprises the northwest portion of the province while Zone 2 consists of the north central and northeast areas. Zones 3, 4, 5, and 6 consist of east-west bands across the province running generally through Edmonton, Red Deer, Calgary, and Lethbridge respectively. Rather than look at all 84 public rural jurisdictions as a single group, using the zones permits smaller groupings into Zones 1 to 6 of 10, 12, 18, 13, 15, and 16 respectively and enables observation of regional variances.

Among all of the public rural jurisdictions, smaller public rural jurisdictions were generally wealthier than larger public rural jurisdictions, being generally more significant in the southern part of the province. This was opposite to the situation found in the eight largest urban jurisdictions. This provided an incentive for some public rural jurisdictions to remain small.

The weighted average equalized assessment per enrolled student was $5,299, 5,476, 7,997, 8,463, 10,691, and 8,911 in Zones 1 to 6 respectively compared to a weighted average for all public rural jurisdictions of $7,892 and a provincial weighted average of $9,383. Among the public rural jurisdictions, those in Zones 3, 4, 5, and 6 were advantaged while those in Zones 1 and 2 were disadvantaged. However, in comparison to the provincial weighted average, only Zone 5 was advantaged, exceeding the provincial average by 13.9 percent. The provincial weighted average was 77.1, 71.3, 17.3, 10.9, and 5.3 percent greater than Zones 1, 2, 3, 4, and 6 respectively, making the northern part of the province represented by Zones 1 and 2 particularly disadvantaged. The weighted average for the public urban jurisdictions was 48.4 percent greater than for all public rural jurisdictions emphasizing the financial advantage of the large urban centres.

The mean average for all public rural jurisdictions at $10,007 was 26.8 percent greater than the weighted average. The mean average was 2.3, 2.3, 11.7, 37.4, and 63.1 percent greater than the weighted average in Zones 2 to 6 respectively. Only Zone 1 was the exception where the weighted average was 5.2 percent greater than the mean average. The advantage for smaller public rural jurisdictions became progressively more significant as you moved south through Zones 4 to 6.

It is noted that Zone 5 with the highest weighted average assessment had the lowest tax effort with a weighted average mill rate of 12.12, which the provincial weighted average of 14.41 exceeded by 18.9 percent. Zone 1 with the lowest weighted average assessment had the highest effort with a weighted average mill rate of 16.25, 12.8 percent greater than the provincial average. However, tax effort is not always inversely related to level of assessment wealth. Zone 6 was the second wealthiest among the six zones but still had a weighted average mill rate above the provincial weighted average. Zone 2 is significantly disadvantaged in assessment wealth but still had a weighted average mill rate below the provincial weighted average.

The mean average supplementary requisition per enrolled student was 22.5 percent greater than the weighted average for all public rural jurisdictions generally mirroring the comparison of assessment and reinforces the observation that, on average, the smaller public rural jurisdictions were advantaged over the larger public rural jurisdictions. Among the divisions and counties, Medicine Hat School Division (later Cypress) was the wealthiest with an equalized assessment per enrolled student of $28,914, just over three times the provincial weighted average of $9,383. Amazingly, that board chose to levy a mill rate of 23.19, 60.9 percent greater than the provincial weighted average, producing $671 in supplementary requisition per enrolled student, nearly five times the provincial average of $13[illegible] The provincial weighted average equalized assessment per enrolled student is 3.6 times the meager $2,580 tallied for Lac La Biche School Division. That board chose to levy a mill rate of 14.07, which the provincial weighted average exceeded by 2.4 percent, producing a paltry $36 in requisition per enrolled student. Clearly, choice enters into the process when considering only individual boards and demonstrates the necessity for comparing groupings of jurisdictions to identify meaningful variances and trends.

Separate Rural Jurisdictions. A comparison of equalized assessments per enrolled student, equalized mill rates, supplementary requisitions and instruction expenditures per enrolled student for all separate jurisdictions operating one or more schools for 1973, excluding the eight largest urban centres, is found in Appendix A-3. Of the 38 separate districts in this rural group, Glen Avon, which was coterminous with St. Paul School District, was Protestant. The remaining 37 were Roman Catholic. The separate jurisdictions varied significantly in size from Nampa with 75 enrolled students to Sherwood Park with 1,781.

Larger separate rural jurisdictions were generally wealthier than smaller separate rural jurisdictions, which was the opposite of the public rural jurisdictions, suggesting that boundary expansion was a potential method for separate rural jurisdictions to increase their assessment wealth. Separate rural jurisdictions were significantly disadvantaged in comparison to the public rural jurisdictions in assessment, requisition, and instruction.

The weighted average equalized assessment per enrolled student was $2,904, 4,120, 3,610, 3,970, 5,525, and 3,323 in Zones 1 to 6 respectively compared to a weighted average for all separate rural jurisdictions of $3,581. The separate rural jurisdictions in Zone 5 were at the greatest advantage while those in Zone 1 were at the greatest disadvantage, consistent with the public rural jurisdictions. The Zone weighted averages for the public rural jurisdictions were 82.5, 32.9, 121.5, 113.2, 93.5, and 168.2 percent greater than those for the separate rural jurisdictions in Zones 1 to 6 respectively. The weighted average for all public rural jurisdictions was 120.4 percent greater and the provincial weighted average was 162.0 percent greater than the weighted average for all separate rural jurisdictions.

The mean average equalized assessment per enrolled student was 1.2 and 33.5 percent greater than the weighted average in Zones 2 and 3 respectively. The weighted average was 8.9, 11.3, 8.2, and 0.9 percent greater than the mean average in Zones 1,4, 5, and 6 respectively. This tells us that among the majority of the separate rural jurisdictions, the larger jurisdictions were wealthier than the smaller jurisdictions.

It is noted that the mean average for all separate rural jurisdictions was still 2.8 percent greater than weighted average, but that was attributable to the significant skew contributed by the large percentage variance in Zone 3. Among the seven separate rural jurisdictions in Zone 3 were two relatively small jurisdictions, Fort Saskatchewan and St. Martin's (later Vegreville), which were the two wealthiest separate rural jurisdictions in the province by a wide margin with equalized assessment per enrolled student of $7,258 and $10,842 respectively. The two poorest separate jurisdictions in the province were Beaverlodge and Fort Vermilion in Zone 1 with equalized assessment per enrolled student of a meager $966 and $917 respectively.

The weighted average equalized mill rate for all public rural jurisdictions at 14.07 was 18.4 percent greater than the weighted average for all separate rural jurisdictions at 11.88. The separate rural jurisdictions in comparison to the public rural jurisdictions were already at a substantial disadvantage in equalized assessment per enrolled student. When this was combined with the majority of separate rural jurisdictions choosing to levy a mill rate below the provincial average and below the public rural jurisdictions, this disadvantage was compounded in the comparative level of supplementary requisition per enrolled student.

The provincial weighted average supplementary requisition per enrolled student at $135 was above the weighted average of $39, 35, 40, 34, 76, and 57 for separate rural jurisdictions in Zones 1 to 6 respectively by 246.2, 285.7, 237.5, 297.1, 77.6, and 136.8 percent. Zone 5 produced the highest requisition amount consistent with its advantageous assessment position. However, while Zone 1 was at the greatest assessment disadvantage, it raised more requisition than Zones 2 and 4 as a result of a weighted average equalized mill rate of 13.32 in comparison to 8.49 and 8.65 for Zones 2 and 4 respectively. The weighted average requisition per enrolled student for the public rural jurisdictions in each of the six zones was 120.5, 108.6, 165.0, 279.4, 71.1, and 147.4 percent greater than the separate rural jurisdictions in Zones 1 to 6 respectively.

Zone 3 was once again the standout anomaly, but this time it was primarily attributable to just one of the two wealthiest separate rural jurisdictions. Second wealthiest Fort Saskatchewan levied an equalized mill rate of just 8.29 and collected $60 in supplementary requisition per enrolled student, less than half the provincial average of $135 but still 39.5 percent greater than the weighted average supplementary requisition per enrolled student for all separate rural jurisdictions of $43. The separate jurisdiction wealth leader, St. Martin's, levied an equalized mill rate of 19.62, 36.2 percent above the provincial weighted average of 14.41, and became the only separate jurisdiction in the province, urban or rural, to raise a supplementary requisition per enrolled student above the provincial weighted average. St. Martin's raised an impressive $213 in requisition per enrolled student, 57.8 percent above the provincial weighted average of $135.

The provincial weighted average instruction expenditure per enrolled student at $701 was 19.6, 16.8, 30.3, 21.1, 11.4, and 20.2 percent greater than the weighted average instruction expenditures for Zones 1 to 6 respectively at $586, 600, 538, 579, 629, and 583. The variances from provincial weighted average for the public rural jurisdictions ranged from 0.7 to 7.2 percent. The variances for the separate rural jurisdictions in instruction expenditures were consistently much more significant.

The weighted average instruction expenditures for the public rural jurisdictions were 13.7, 9.0, 21.7, 21.9, 13.4, and 13.0 percent higher than the separate rural jurisdictions in Zones 1 to 6 respectively. Clearly, an advantage in the level of equalized assessment translated into an advantage in classroom resources. However, in Zones 1 to 5, the advantage of the public rural jurisdictions over the separate rural jurisdictions in instruction expenditure exceeded the value of the advantage in supplementary requisition. This suggests that there were other funding and cost variance issues impacting investment in instruction than just the variances in requisition, such as the size of the jurisdictions and the size of the schools within them. Only in Zone 6 was the value of the public advantage in instruction expenditure less than the value of the public advantage in requisition, as one would expect when the requisition is only a minor portion of total funding.

Public Jurisdictions and their related Separate Jurisdictions. The review of equalization in the year 1973 has included all of the public jurisdictions and all of the separate jurisdictions. Appendix A-5 contains a more focused comparison of all separate jurisdictions with just those public jurisdictions in which the separate jurisdictions were located. Of the 92 public jurisdictions, 37 contained at least one separate jurisdiction. Perhaps the public jurisdictions in which no separate jurisdictions are located were particularly wealthy ones, and with them excluded the separate jurisdictions will compare more favourably to their public counterparts.

Initially, the public and separate jurisdictions were grouped into the eight largest urban jurisdictions and rural jurisdictions, which in turn were grouped into zones. In Appendix A-5, the public jurisdictions containing separate jurisdictions are grouped into three jurisdiction types to assess variances: 14 school divisions, 12 counties, and 11 school districts.

The weighted average equalized assessment per enrolled student for the school divisions at $6,768 was 100.9 percent greater than the $3,369 for their separate counterparts. Both are disadvantaged in comparison to the provincial weighted average of $9,383, but the school divisions still had twice the assessment as their separate jurisdictions. The school divisions had a weighted average equalized mill rate at 14.39, which was virtually at the provincial average of 14.41 but 11.1 percent greater than the separate jurisdictions at 12.95. Only Taber Separate had a mill rate higher than Taber School Division, and the difference was less than one mill. The school divisions produced 123.1 percent more in supplementary requisition per enrolled student.

The school divisions invested $661 per enrolled student in instruction giving them a 12.8 percent advantage over their separate counterparts at $586. Had the separate jurisdictions chosen to levy, on average, the same weighted average equalized mill rate as the school divisions at 14.39, they would have collectively raised $257,276 in supplementary requisition instead of $231,592 or $25,684 more. If the separate jurisdictions had dedicated all of their requisition increase to instruction, the separate jurisdictions would have invested $591 in instruction instead of $586 and the advantage of the school divisions in instruction expenditure would have been reduced from 12.8 percent to 11.8 percent.

The weighted average equalized assessment per enrolled student for the counties at $8,245 was 142.8 percent greater than the $3,396 for their separate counterparts. The counties had a weighted average equalized mill rate at 13.06, which was 4.3 percent greater than the separate jurisdictions at 12.52. Only Beaverlodge and Coaldale separate jurisdictions had mill rates more than one and less than two mills greater than their respective counties; Sexsmith, Ponoka, and Vermilion separates set mill rates of less than one mill greater. The counties produced 153.3 percent more in supplementary requisition per enrolled student.

The counties invested $662 per enrolled student in instruction giving them a 21.4 percent advantage over their separate counterparts at $545. Had the separate jurisdictions chosen to levy, on average, the same weighted average equalized mill rate as the counties at 13.06, they would have collectively raised $208,240 in supplementary requisition instead of $199,630 or $8,610 more. If the separate jurisdictions had dedicated all of their requisition increase to instruction, the separate jurisdictions would have invested $547 in instruction instead of $545 and the advantage of the counties in instruction expenditure would have been reduced from 21.4 percent to 21.0 percent.

The references for the public school districts do not vary significantly from those for the eight largest urban jurisdictions. Adding three additional smaller urban centres of Camrose, St. Paul, and Wetaskiwin had a modest impact on the weighted averages. The tendency for rural jurisdictions and smaller urban centres to levy lower mill rates had resulted in both the public school districts and their separate jurisdictions having essentially the same weighted average equalized mill rates at 14.51 and 14.52 respectively, effectively removing tax effort from the consideration of variances.

The weighted average equalized assessment per enrolled student for the public school districts at $11,603 was 49.7 percent greater than the $7,752 for their separate counterparts. The public school districts invested $742 per enrolled student in instruction giving them a 10.1 percent advantage over their separate counterparts at $674.

The school divisions had a 100.9 percent advantage in weighted average equalized assessment per enrolled student and a 11.8 percent advantage in instruction expenditure, adjusted for equal tax effort. The counties had a 142.8 percent advantage in assessment and a 21.0 percent advantage in instruction, adjusted for equal tax effort. The public school districts had a 49.7 percent advantage in assessment and a 10.1 percent advantage in instruction, unadjusted since the tax effort was equal. The separate jurisdictions were disadvantaged in all three groupings, but more so in the rural school divisions and counties, and they were particularly disadvantaged in the counties. This is attributable to the counties that contain separate jurisdictions having a 21.8 percent advantage in assessment over the school divisions containing separate jurisdictions. In contrast, the weighted average equalized assessment for separate jurisdictions in counties varied by less than one percent from separate jurisdictions in school divisions.

In looking at the aggregate summary for just the public jurisdictions containing separate jurisdictions, the separate jurisdictions had an average equalized mill rate that is a negligible six-tenths of one percent greater than the public jurisdictions. The public jurisdictions had a 46.4 percent advantage in assessment, a 45.5 percent advantage in requisition, and a 9.1 percent advantage in instruction. When the separate jurisdictions were compared to all public jurisdictions in Appendix A-4, the public jurisdictions had a 37.9 percent advantage in both assessment and requisition and a 7.5 advantage in instruction. When the public jurisdictions having no separate jurisdictions within their boundaries were deleted, the advantage to the public jurisdictions in comparison to the separate jurisdictions increased. Thus, those public jurisdictions deleted were less wealthy than the weighted average for all public jurisdictions, not more so.

Summary

The Minister's Committee on School Finance, 1969, evaluated the School Foundation Program Fund for the years 1961 to 1969. Those years were marked by a steady increase in the proportion of school jurisdiction revenues provided by the supplementary requisition. While the supplementary requisitions were low, fiscal equalization was generally achieved. As requisition mill rates increased, equalization was less common. The Minister's Committee on School Finance, 1972, found that the new 1970 School Foundation Program achieved greater fiscal equalization than under the 1961 to 1969 formula. This was primarily attributable to a reduction in the proportion of supplementary requisitions and an increase in the proportion of provincial government revenues (Deiseach, 1974: p. 34). Supplementary requisitions had grown to 16.9 percent of school jurisdiction revenue by 1969 but fell back to 11.4 percent for 1970 (Milne, 1982: p. 31).

Funding school jurisdictions based on the number of teachers employed and the salaries paid does appear to be a somewhat obvious recipe for inflation. However, local capacity to raise funds through the supplementary requisition was also a contributing factor. School jurisdictions with greater assessment wealth could afford to hire more teachers and more qualified teachers than other jurisdictions and would have received a larger grant in the teacher category as a result, a true instance of the rich getting richer. In examining the degree of fiscal equalization under the School Foundation Program Fund from 1961 to 1971, Deiseach found:

> ...a tendency for wealthier school systems to receive relatively higher foundation payments per weighted pupil than systems with less fiscal ability in each year (Deiseach, 1974: p. 83).

It is important to note that in 1973 the supplementary requisition represented just 12.9 percent of total revenues for school jurisdictions. In addition to instruction, these local revenues were, at least in theory, needed to assist with the costs of other functions such as transportation, maintenance, administration and contribution to capital. A 37.9 percent advantage for public jurisdictions in supplementary requisition, which averages 12.9 percent of total revenue, should produce an advantage of 4.9 percent (12.9 x 0.379) in total revenue. If the supplementary requisition revenue were proportionately shared between each cost function, then one could expect a 4.9 percent advantage for public jurisdictions in each cost function, including instruction expenditure. In practice, however, the supplementary requisition revenue was not applied proportionately but appears to have been applied with more emphasis on the instruction cost function.

Among all public jurisdictions and among all separate jurisdictions in 1973, jurisdictions in the eight largest urban centres were, on average, advantaged in assessment, requisition, and instruction in comparison to the rural jurisdictions.

CHAPTER SEVEN

THE SUPPLEMENTARY REQUISITION EQUALIZATION GRANT *and* A REVIEW OF FISCAL EQUALIZATION IN 1983

Introduction

The Province of Alberta introduced the School Foundation Program Fund (SFPF) in 1961. Prior to that time, local property taxation had been the primary source of revenue for school jurisdictions. The basic purpose of the SFPF was to provide every school jurisdiction with sufficient funds to achieve a minimum standard of education and an equalization of educational opportunity.

In the previous chapter, a detailed analysis was made of the mature fiscal equalization effects of the School Foundation Program Fund (SFPF) for the year 1973. This chapter will move one decade ahead to the year 1983 and examine the fiscal equalization effects of the School Foundation Program Fund (SFPF) as modified by the Supplementary Requisition Equalization Grant (SREG) and other less significant grants intended to contribute to fiscal equalization.

Supplementary Requisition Equalization Grant

In 1972, the Government of Alberta released its Report of the Commission on Educational Planning, commonly referred to as the Worth Report after Commissioner, Walter H. Worth. It contained the following comment, which would launch an intensified search for the elusive goal of fiscal equalization between school jurisdictions:

> The availability of revenues from supplementary requisitions is highly dependent on the property assessment per pupil which varies widely throughout the province. If the present system of supplementary requisitions were continued, then the recommendations aimed at providing equity in basic education would be disturbed because of wide disparities in property assessments and tax rates between school districts...To compensate for these inequities a provincial equalizing supplementary grant, which would permit additional provincial aid to flow predominantly to school districts, divisions or counties with low assessment per pupil, is essential (Government of Alberta, 1972: p. 292-293).

The Supplementary Requisition Equalization Grant (SREG) was introduced in 1975 as an attempt to implement the recommendation from the Report of the Commission on Educational Planning. Its purpose was to make supplementary requisitions among school jurisdictions more equitable, to provide an incentive to keep requisitions as low as possible (Milne, 1982: p. 35), and to attempt to equalize the residential property tax burden (Darby, 1993: p. 3).

SREG Development

The Supplementary Requisition Equalization Grant (SREG) introduced in 1975 was one of a series of grants introduced in the 1970's designed to offset differential costs among school jurisdictions resulting from circumstances beyond the control of the jurisdictions. In 1971, a Location Allowance Grant was established to assist jurisdictions with the additional costs of employing teachers in remote and isolated communities. From 1973 to 1978, a Superintendency Grant was provided to support the joint employment of a superintendent by jurisdictions with small enrolments; in 1979, it was replaced by the Small School Jurisdiction Grant provided to jurisdictions with a total enrolment of less than 1500 students. In 1974, the Small School Assistance Program was introduced to assist jurisdictions with fewer that 6,000 total students and one or more small schools. In 1975, the Declining Enrolment Grant was provided to assist jurisdictions experiencing a decline in their student enrolment. In 1978, the Private School Opening Grant was introduced to compensate jurisdictions for the loss of revenue resulting from the jurisdiction's resident students attending a newly approved private school within the boundaries of the jurisdiction. An Incremental Grant was also established to assist with "unique recognized problems of a jurisdiction or specially approved programs not provided for elsewhere under the grant structure" (Jefferson, 1982: p. 69); a school board essentially presented their particular case to the government for individual adjudication.

In 1980, a Corporate Assessment Grant was established to lessen the financial impact on jurisdictions that would no longer receive all funds generated from undeclared corporate assessment. This grant was introduced as a direct result of the amendments to the School Act (1970) provided by the Alberta Statutes (1979) and (1980). Grants in lieu of taxes for properties owned by the municipality or the province would no longer be allocated to the public jurisdictions by default but would be split between the public and separate jurisdictions in proportion to the number of resident students of each jurisdiction residing in the municipality. Undeclared corporate assessment would no longer be split on the basis of the percentage of non-corporate assessment but also in proportion to the number of resident students. The Corporate Assessment Grant was offered as a political appeasement to public jurisdictions on the losing end of this change in legislation.

Alberta Education grouped all of these grants under the label of fiscal equalization grants (Jefferson, 1982; Milne, 1982). Jefferson preferred to call them categorical grants denoting "funds which are non-restrictive and can be used with wide local discretion" (Jefferson, 1982: p. 9). Among these fiscal equalization grants, the Supplementary Requisition Equalization Grant (SREG) was the most significant.

> Among the fiscal equalization grants,...the supplementary requisition (local school taxation) equalization grant is possibly the most important in terms of its impact upon local revenues for education and upon taxpayers. Further,...SREG...is the sole grant in Alberta's educational funding arrangement which is directly focussed upon the aspect of fiscal equalization which received most emphasis in the literature reviewed: the equalization of wealth and thus the equalization of the local educational tax burden (Milne, 1982: p. 3).

SREG, when added to the supplementary requisition, was intended to guarantee each jurisdiction a minimum level of support for each resident student based on a given per student assessment and equalized mill rate. In 1979, a regulation was introduced specifying the extent to which SREG could be reduced annually for any jurisdiction. This hold-harmless provision guaranteed each jurisdiction at least 80 percent of its previous year's allocation (Jefferson, 1982: p. 59).

A jurisdiction's SREG was calculated based on available data for the year before. The 1979 formula effectively topped up the requisition per student revenue to a level which the jurisdiction would have raised if it had an equalized assessment "in 1978 of $18,042 for divisions and counties and $21,000 for jurisdictions other than counties or divisions" (Milne, 1982: p. 43). Since public districts and separate districts are "jurisdictions other than counties or divisions," it appears that this assessment benchmark differentially topped up rural separate districts to a higher standard than their rural public counterparts, the divisions and counties, at least in 1979. This guaranteed per student yield was conditional upon a jurisdiction making a minimal requisition effort set at an equalized mill rate of 14.3 mills or greater for 1978; if the mill rate was less, the amount of SREG was prorated (Milne, 1982).

This mill rate benchmark kept jurisdictions from setting lower mill rates and letting SREG make up the difference from the province. However, from the objective of equalizing tax burden, SREG addressed only the bottom end without in any way limiting how high mill rates could be set.

The Ramsey Formula

There is one other phenomenon that became increasing prominent in the issue of school jurisdiction fiscal equalization with the growing value of resource development in Alberta. Beginning in the 1960's, the provincial government developed a system for allocating taxes on linear properties (power lines and pipelines) to school, hospital and nursing home jurisdictions. Since hospital and nursing home jurisdictions made very limited, if any, use of requisitions on property, taxes on linear property were essentially an issue for municipalities and school jurisdictions. Revenue from linear properties was referred to as Electric Power and PipeLine (EP&PL).

Assessed values of linear properties within urban municipalities were simply included in the value of the municipality's equalized assessment. In rural municipalities, it was virtually impossible to assess linear properties on a parcel by parcel basis and allocate that assessment to school jurisdictions located within the rural municipality in accordance with where the linear property was located. A formula was devised for the distribution of the linear property tax to each school jurisdiction in proportion to the non-linear assessment that each school jurisdiction had within that particular rural municipality. That formula was known as the Ramsey Formula, named for the government bureaucrat who designed it.

A school board would first make a budgetary decision on the total amount of supplementary requisition required to meet its budget. The responsibility for that requisition would be allocated to each of the school jurisdiction's municipal collecting authorities in proportion to the share of equalized assessment (non-linear) contributed by each municipality. Each rural municipality would in turn advise the school jurisdiction the value of its share of the linear tax. The total value of linear tax allocated to a school jurisdiction from each of its rural municipalities would then be shared among all the school jurisdiction's municipal collecting authorities, both rural and urban, again in proportion to the equalized assessments contributed by each municipality. The amount of the supplementary requisition to each municipality would be reduced by the municipality's allocated share of linear tax and the remaining portion of the requisition for each municipality would be levied on the non-linear taxpayers. The total value of the school jurisdiction's requisition was not changed. The amount collected from the non-linear taxpayers, the total supplementary requisition minus the total EP&PL revenue from rural municipalities, was known as the school jurisdiction's net requisition.

The Ramsey Formula provided for a uniform mill rate on all linear properties located within a rural municipality; otherwise, the linear property assessment would have been segmented by the school jurisdiction boundaries and subjected to various mill rates. But the Ramsey Formula was not well loved by the province, the taxed, the rural municipalities, or the school jurisdiction recipients. It was accepted as a necessary compromise. It was complicated and difficult to explain. The mill rates levied on the linear properties and the amount of taxes collected were unpredictable and changed from one year to the next. A school jurisdiction could not estimate the amount of its share of the linear tax. A rural municipality could not calculate the linear tax until it received the supplementary requisition from all school jurisdictions within its boundaries. A school jurisdiction could not calculate the amount of its non-linear tax and, thus, could not estimate the tax burden its voting taxpayers would have to carry until after the total requisition was set and it had received a notice of its linear tax amount from each of its rural municipalities.

The distribution of the value of the linear tax among all of the school jurisdiction's collecting authorities gave the impression that the tax was being unjustly credited to the school jurisdiction's urban municipalities. In reality, linear assessment in urban municipalities was generally modest in comparison to rural municipalities and this impression may have been a false one. The school jurisdiction with the most assessment wealth received a greater share of the linear tax since the linear tax was allocated to each school jurisdiction in proportion to each school jurisdiction's non-linear assessment within the rural municipality. The Ramsey Formula was a recipe for the rich to get richer and would have a profound effect on rural separate school districts in comparison to their public counterparts.

1983 Review of Equalization

For 1983, assessment comparisons were made on the basis of adjusted equalized assessments rather than total equalized assessment as was done for 1973. Mill rate comparisons were based on net mill rate rather than on the equalized mill rate as was done for 1973. A school jurisdiction's net requisition, the value of the supplementary requisition less the value of the EP&PL revenue, is divided by the total equalized assessment (non-linear assessment) to obtain the net mill rate. For ease of reference, this net mill rate is multiplied by 1,000. Whenever it is used in a calculation, the 1,000 factor is removed. The net mill rate provides the appropriate comparison among school jurisdictions of the property tax burden placed on the non-linear taxpayers after the EP&PL revenue has been applied to the school jurisdiction's supplementary requisition. The portion of the supplementary requisition coming from EP&PL revenue for each school jurisdiction is no longer available from the province prior to 1982 and could not be considered for 1973; it is also believed to have become much more significant in the intervening decade.

To calculate the adjusted equalized assessment, the net mill rate without the 1,000 factor is divided into the EP&PL revenue and the result is added to the total equalized assessment. The adjusted equalized assessment is thus the value of the total equalized assessment adjusted for the value of the EP&PL revenue at a particular school jurisdiction's level of tax burden on its non-linear taxpayers. When divided by the number of resident students that a school jurisdiction is legally required to provide an education, adjusted equalized assessment per resident student provides the appropriate comparison among school jurisdictions of local wealth or local capacity to raise revenue.

The same process is applied to the total of the fiscal equalization grants allocated to a school jurisdiction to measure their impact on local wealth. The total of the jurisdiction's Supplementary Equalization Grant and its other fiscal equalization grants is divided by the net mill rate and the result added to the adjusted equalized assessment to obtain a modified adjusted equalized assessment. When divided by the number of resident students, modified adjusted equalized assessment per resident student provides an appropriate comparison among school jurisdictions of the impact on local wealth effected by the fiscal equalization grants.

For the 1983 review, Grades 1 to 12 resident student counts for September 30, 1983, assessment and requisition amounts were taken from Annual Financial & Statistical Analysis (Alberta Education, 1983a). Total fiscal equalization grants for 1983 were borrowed from tables compiled by Schmidt (1988), as these numbers are no longer available from the Government of Alberta. Grades 1 to 12 instruction expenditure amounts for 1983 were found in the Financial and Statistical Report of Alberta School Boards (Alberta Education, 1983b) and enrolled student counts for September 30, 1983, were found in Alberta Education's Seventy-Ninth Annual Report (Alberta Education, 1983c).

Eight Largest Urban Centres. A comparison of adjusted equalized assessments and supplementary requisitions per resident student, net mill rates, total fiscal equalization grants, and modified adjusted equalized assessment per resident student for public and separate jurisdictions in Alberta's eight largest urban centres for 1983 is found in Appendix B-1. A comparison of Grades 1-12 instruction expenditure amounts per enrolled student for those same public and separate jurisdictions in Alberta's eight largest urban centres for 1983 is found in Appendix B-5.

Among the eight largest urban jurisdictions, the larger urban jurisdictions generally had an advantage over smaller urban jurisdictions and public urban jurisdictions had an advantage over separate urban jurisdictions in the level of adjusted equalized assessment (as modified for the fiscal equalization grants), the level of supplementary requisition produced, and the amount invested in classroom instruction. These variances had diminished somewhat for the year 1983 from 1973.

The weighted average adjusted equalized assessment per resident student for the eight public jurisdictions was $65,625. The weighted average for the eight was 19.5 percent greater than the mean average of $54,901 (23.5 percent in 1973). For 1983, Edmonton and Calgary continued to be wealthier than five of the others but Fort McMurray was the wealthiest.

The weighted average adjusted equalized assessment per resident student for the eight separate jurisdictions was $51,854; the corresponding reference for the eight publics was 26.6 percent greater. It was 50.2 percent greater in 1973; the comparative gap has narrowed but the local capacity disadvantage of the eight separate urban jurisdictions is still significant. The weighted average for the eight separates was 12.2 percent greater than the mean average of $46,235 (34.9 percent in 1973). As with the eight publics, Fort McMurray is the wealthiest at $74,274 with Calgary and Edmonton being wealthier than the other five.

The weighted average for the eight publics was 18.9 percent greater than the provincial weighted average for all jurisdictions at $55,208 (24.8 percent in 1973). The provincial average was in turn 6.5 percent greater than the average for the eight separate jurisdictions (20.4 percent in 1973).

Edmonton public at $72,937 was 9.8 percent greater than Calgary public at $66,444 (33.1 percent in 1973). Edmonton separate at $58,545 was 16.4 percent greater than Calgary separate at $50,283 (64.3 percent in 1973). This diminishing advantage for both Edmonton Public and Separate over their Calgary counterparts demonstrates that Calgary's development rate was exceeding that of Edmonton enabling Calgary to partially catch up to Edmonton. The resident student count for St. Albert Protestant separate at 5,050 was 58.0 percent greater than St. Albert public at 3,197 (up from 52.0 percent greater in 1973 based on the proxy enrolment count). This continues to reinforce the perspective that those of the Protestant faith are no longer in the minority.

With respect to the net mill rates, both the large urban public jurisdictions at 23.28 and large urban separate jurisdictions at 23.76 had slightly higher weighted average net mill rates than the provincial weighted average of 23.05. There was little variance in the net mill rates between public and separate jurisdictions in the same community, although only in Grande Prairie were they the same, unlike 1973, when five out of the eight cities had the same public and separate equalized mill rates. The unpredictability of the Ramsay Formula was making it impossible for public and separate boards to precisely set the same net mill rates for non-linear ratepayers, unless both had coterminous boundaries with an urban municipality where all assessment for linear properties was included in the total equalized assessment.

The mean average net mill rates of 25.58 and 25.85 for the eight public and eight separate jurisdictions respectively were 9.9 and 8.8 percent greater than the respective weighted average net mill rates. This is indicative that the smaller urban jurisdictions were carrying a larger mill rate burden than the larger urban jurisdictions. In fact, the net mill rates for both Calgary public and Edmonton public were lower than the other six public jurisdictions, and the net mill rates for both Calgary separate and Edmonton separate were lower than the other six separate jurisdictions.

Fort McMurray was the anomaly here. Both Fort McMurray public and separate placed very high net mill rates at 33.00 and 34.36 respectively on adjusted equalized assessment per resident student that was noticeably greater than their other seven public and separate urban counterparts. Fort McMurray public produced $2,841 in supplementary requisition per resident student, 85.9 percent greater than the weighted average for the eight public urban jurisdictions at $1,528. Fort McMurray separate produced $2,552 in requisition per student, 107.1 percent greater than the weighted average for the eight separate urban jurisdictions at $1,232. Fort McMurray was now a rapidly developing city willing to levy high rates on high assessment to provide a high level of investment in educational services.

The weighted average requisition per resident student for the eight public urban jurisdictions at $1,528 was 20.1 percent greater than the provincial weighted average of $1,272 (26.7 percent greater in 1973). The weighted average for the eight separate urban jurisdictions was $1,232; the provincial weighted average was 3.2 percent greater while the weighted average for the eight publics was 24.0 percent greater (18.4 and 50.0 percent greater in 1973).

The purpose of the Supplementary Requisition Equalization Grant (SREG) and the other fiscal equalization grants was to reduce the impact of those variances. Among the eight public urban and eight separate urban jurisdictions, only Calgary and Edmonton public received no revenue from the fiscal equalization grants; even Fort McMurray public and separate were deemed worthy for at least some small blessings in this area. The weighted average adjusted equalized assessment per resident student for the eight public urban jurisdictions at $65,625 was 26.6 percent greater than the value for the eight separate urban jurisdictions at $51,854. The weighted average modified adjusted equalized assessment per resident student for the eight publics at $66,229 was 19.5 percent greater than the value for the eight separates at $55,402. While the SREG and the other fiscal equalization grants narrowed the assessment per student gap, it was not what one would deem a change of significance. Remember the assessment per student gap between the eight public and separate urban jurisdictions was 50.2 percent in 1973. It appears that other factors, such as separate jurisdictions rigorously pursuing a proportional share of undeclared corporate assessment, had a much greater impact on this gap than SREG and the other fiscal equalization grants.

It is most important to understand the impact of these resource variances on the resources invested in the classroom. Edmonton public's modified assessment measure at $72,937 was 9.8 percent greater than Calgary public at $66,444 and 85.7 percent greater than St. Albert public at $39,282. Edmonton public's instruction expenditure per enrolled student, Grades 1 to 12, at $2,808 was 2.4 percent greater than Calgary public at $2,741 and 21.6 percent greater than St. Albert public at $2,310.

Edmonton separate's modified measure of assessment at $58,914 was 8.4 percent greater than Calgary separate at $54,331 and 49.1 percent greater than St. Albert separate at $39,509. Edmonton separate's instruction expenditure per enrolled student at $2,627 was 10.9 percent greater than Calgary separate at $2,368 and 9.1 percent greater than St. Albert separate at $2,407. It would appear that budgetary choices made by boards also played a role in determining the level of classroom investment. The combined dollars from supplementary requisition and the fiscal equalization grants per resident student for Edmonton separate at $1,321 was $218 greater than St. Albert separate at $1,103; this was very close to the variance in instruction expenditure for these two separate boards of $220. The combined dollars from requisition and fiscal equalization grants for Calgary separate at $1,222 was $99 less than Edmonton separate, yet Calgary separate invested $259 less in classroom instruction.

The weighted average instruction expenditure per enrolled student for the eight public jurisdictions was $2,736, 4.2 percent greater than their mean average. The weighted average for the eight separate jurisdictions was $2,460, 4.8 percent greater than their mean average. These references reinforce the advantage of the larger urban jurisdictions over the smaller urban jurisdictions, although the advantage was somewhat less than the 5.0 and 8.9 percent advantages respectively in 1973. The weighted average for the eight public jurisdictions was 7.3 percent greater than the provincial weighted average at $2,551 (5.8 percent greater in 1973) and 11.2 percent greater than the weighted average for the eight separate jurisdictions (9.9 percent greater in 1973).

Public Rural Jurisdictions. A comparison of adjusted equalized assessments and supplementary requisitions per resident student, net mill rates, total fiscal equalization grants, and modified adjusted equalized assessment per resident student for all public jurisdictions operating one or more schools for 1983, excluding the eight largest urban centres, is found in Appendix B-2. A comparison of Grades 1-12 instruction expenditure amounts per enrolled student for those same public jurisdictions for 1983 is found in Appendix B-6. The public jurisdictions are again grouped into the six geographical zones.

In Zone 2, both Bonnyville School District and Bonnyville School Division had been reincarnated as Lakeland School District, and Whitecourt School District had been established as an autonomous district. In Zone 5, Calgary School Division had been renamed Rocky View School Division, Sullivan Lake School Division had been renamed Rangeland School Division, Mount Rundle School Division had been established, and Canmore, Hanna and Seebe were no longer autonomous school districts. In Zone 6, Medicine Hat School Division had been renamed Cypress School Division and Waterton Park was no longer an autonomous school district.

The 81 public rural jurisdictions (84 in 1973) varied greatly in size from Lousana Consolidated School District with 47 resident students to County of Strathcona with 11,892 resident students.

Among all of the public rural jurisdictions, as in 1973, smaller public rural jurisdictions were generally wealthier than larger public rural jurisdictions. For 1983, this was especially significant in Zones 2 and 5. This translated into an advantage in requisition and instruction dollars and continued to provide an incentive for some public rural jurisdictions to remain small. Public rural jurisdictions were disadvantaged in comparison to the provincial weighted average assessment as adjusted for linear revenue; SREG and the other fiscal equalization grants had cut that difference in half.

The weighted average adjusted equalized assessment per resident student was $46,566, 36,808, 48,619, 52,386, 62,367, and 44,626 in Zones 1 to 6 respectively compared to a weighted average for all public rural jurisdictions of $49,086 and a provincial weighted average of $55,208. Among the public rural jurisdictions, those in Zones 4 and 5 were advantaged while those in Zones 1, 2, 3, and 6 were disadvantaged.

This has changed from 1973 when Zones 3 and 6 were also advantaged, along with Zones 4 and 5. In comparison to the provincial weighted average, only Zone 5 was advantaged (as in 1973) exceeding the provincial average by 20.2 percent (13.9 percent in 1973).

The provincial weighted average is 18.6, 50.0, 13.6, 5.4, and 23.7 percent greater than the weighted average for Zones 1, 2, 3, 4, and 6 respectively. These percentages were 77.1, 71.3, 17.3, 10.9, and 5.3 in 1973. Zones 1, 2, 3 and 4 have improved in comparison to the provincial weighted average while Zone 6 has regressed. Zone 1, although still relatively disadvantaged, has improved most dramatically. The allocation of the tax revenue on linear property under the Ramsay formula has had a significant impact on the changes in these comparisons. The weighted average for the public urban jurisdictions was 33.7 percent greater than for all public rural jurisdictions, compared to 48.4 percent in 1973, suggesting a decline in the financial advantage of the large urban centres.

The mean average adjusted equalized assessment per resident student was 5.8, 30.9, 0.6, 7.2, 92.1, and 8.0 percent greater than the weighted average in Zones 1 to 6 respectively and 24.8 percent greater for all the public rural jurisdictions (26.8 percent greater in 1973).

It is noted that, as in 1973, Zone 5 with the highest weighted average assessment had the lowest effort with a weighted average net mill rate of 19.43, which the provincial weighted average of 23.05 exceeded by 18.6 percent (18.9 in 1973). Zone 2 is significantly disadvantaged in assessment but still has a weighted average net mill rate below the provincial average, as was the case in 1973. Zone 1, as in 1973, made the greatest effort. Only in Zone 1, with the weighted average at 26.11, was a tax effort made that is greater than the provincial weighted average; it was greater by 13.3 percent.

The mean average supplementary requisition per resident student was 8.6 percent greater than the weighted average for all the public rural jurisdictions (22.5 percent greater in 1973). This generally mirrors the comparison of mean average adjusted equalized assessment per resident student with the weighted average and reinforces the observation that, on average, the smaller public rural jurisdictions are advantaged over the larger public rural jurisdictions, although that advantage may be diminishing.

Among the divisions and counties, Berry Creek School Division was the wealthiest with an adjusted equalized assessment per resident student of $291,209, 5.3 times the provincial weighted average of $55,208. The provincial weighted average net mill rate of 23.05 exceeded Berry Creek's net mill rate at 9.10 by 153.3 percent; however, that jurisdiction still raised $2,650 in supplementary requisition per resident student, over twice the provincial average of $1,272. The provincial average adjusted equalized assessment per resident student was three times the meager $18,231 available to Lac La Biche School Division that was the poorest among the divisions and counties, as it was in 1973. With a net mill rate of 23.94, 3.9 percent above the provincial weighted average, Lac La Biche produced only $436 in supplementary requisition per resident student; the provincial average was nearly three times that much.

Again within the divisions and counties, Spirit River School Division and the Counties of Athabasca, Minburn, Two Hills, Forty Mile, and Vulcan were among those with supplementary requisitions per resident student that were above the provincial average for 1983. But these jurisdictions achieved that by having above average net mill rates applied to below average adjusted equalized assessments per resident student. Darby referred to this situation as effort neutrality:

> …equity is not violated if jurisdictions with high per pupil revenues or expenditures obtained them because they chose to shoulder a heavier tax burden, that is, if taxpayers are willing to pay more they should get more (Darby, 1993: p. 13).

Among the public rural jurisdictions, only tiny Exshaw School District, with its $379,117 in adjusted equalized assessment per resident student, received no revenue from SREG and the other fiscal equalization grants. The provincial weighted average adjusted equalized assessment per resident student at $55,208 was 12.5 percent greater than the weighted average for the public rural jurisdictions at $49,086. The provincial weighted average modified adjusted equalized assessment per resident student at $59,049 was 6.2 percent greater than the weighted average for the public rural jurisdictions at $55,581. While the fiscal equalization grants had not removed the disadvantage in the weighted average assessment measure of the public rural jurisdictions in comparison to the provincial weighted average, it had cut that difference in half.

While Berry Creek School Division's adjusted equalized assessment per resident student of $291,209 was 16.0 times that cherished by Lac La Biche School Division at $18,231, Berry Creek's modified adjusted assessment measure of $331,792 was only 8.7 times that of Lac La Biche at $38,210. While the change is significant, the difference remains shameful. In 1973, the measure of assessment for Berry Creek was 10.6 times that of Lac La Biche. The fiscal equalization grants appear to have done little more than stay even with the growing gap in assessment wealth between rich and poor jurisdictions.

Separate Rural Jurisdictions. A comparison of adjusted equalized assessments and supplementary requisitions per resident student, net mill rates, total fiscal equalization grants, and modified adjusted equalized assessment per resident student for all separate jurisdictions operating one or more schools for 1983, excluding the eight largest urban centres, is found in Appendix B-3. A comparison of Grades 1-12 instruction expenditure amounts per enrolled student for those same separate jurisdictions for 1983 is found in Appendix B-7. The separate rural jurisdictions are also grouped into the six geographical zones.

Of the 41 separate districts in this rural group (38 in 1973), Glen Avon remained the only Protestant separate district. The remaining 40 separate districts were Roman Catholic. In Zone 1, Rosary Separate District had been renamed Manning Separate District and St. Thomas More had been renamed Fairview. In Zone 2, Cold Lake and Grande Centre were now part of Lakeland Separate District, which had coterminous boundaries with the newly created Lakeland School District and its predecessor, the former Bonnyville School Division, making Lakeland separate the only "division sized" rural separate district. In Zone 3, St. Martin's had been renamed Vegreville, and Edson, Hinton, Leduc, Spruce Grove, and Stony Plain had been established. In Zone 4, Rocky Mountain House had been established, and in Zone 5, St. Rita's had been dissolved. The separate rural jurisdictions varied significantly in size from Nampa at 47 resident students to Sherwood Park with 2,659 respectively.

As in 1973, larger separate rural jurisdictions were generally wealthier than the smaller separate rural jurisdictions, which was the opposite of the public rural jurisdictions, suggesting that expanding remained a potential, if not essential, method for separate rural jurisdictions to increase their assessment wealth. The disadvantage of separate rural jurisdictions in comparison to the public rural jurisdictions in assessment, requisition, and instruction had been noticeably moderated by SREG and the other fiscal equalization grants, but remained significant.

The weighted average adjusted equalized assessment per resident student was $22,416, 30,731, 36,903, 30,803, 29,116, and 26,617 in Zones 1 to 6 respectively compared to a weighted average for all separate rural jurisdictions of $31,905. The separate rural jurisdictions in Zone 3 were at the greatest advantage. Those in Zone 1 remained at the greatest disadvantage, as they were in 1973. The Zone weighted averages for the public rural jurisdictions were 107.7, 19.7, 31.7, 70.1, 114.2, 67.7 percent greater than those for the separate rural jurisdictions in Zones 1 to 6 respectively. The weighted average for all public rural jurisdictions was 53.9 percent greater and the provincial weighted average was 73.0 percent greater than the weighted average for all separate rural jurisdictions (120.4 and 162.0 percent in 1973).

The wealthiest separate rural jurisdiction in the province was Fort Saskatchewen and the only one with an adjusted equalized assessment per resident student, at $76,704, that was above the provincial average of $55,208. The poorest separate jurisdiction in the province was Fort Vermilion with only $7,702.

The weighted average adjusted equalized assessment per resident student for all separate rural jurisdictions was 8.6 percent greater than the mean average. This reminds us that among the majority of separate rural jurisdictions, as in 1973, the larger jurisdictions were wealthier than the smaller jurisdictions, which was opposite to the public rural jurisdictions and continued to provide an incentive for separate jurisdictions to become larger.

The zone weighted average net mill rates for separate rural jurisdictions in Zones 1 and 6 were 19.2 and 14.5 percent, respectively, greater than the provincial average; the two zones most disadvantaged by adjusted equalized assessment per resident student were the two zones making the greatest effort in their level of tax burden. The mean average net mill rate for all separate rural jurisdictions at 24.10 was 6.4 percent greater than the weighted average at 22.64 demonstrating that the smaller separate rural jurisdictions that were disadvantaged in assessment, compared to their larger brethren, were making a larger tax effort.

The provincial weighted average supplementary requisition per resident student at $1,272 was above the weighted average of $616, 708, 782, 661, 675 and 703 for separate rural jurisdictions in Zones 1 to 6 respectively by 106.5, 79.7, 62.7, 92.4, 88.4 and 80.9 percent. Zone 3 produced the highest requisition amount consistent with its position as the most advantaged zone for assessment. Zone 1 produced the lowest requisition amount consistent with its position as the most disadvantaged zone for assessment.

The weighted average supplementary requisition per resident student for the public rural jurisdictions in each of the six zones was 97.4, 12.9, 42.8, 59.9, 79.6, and 37.6 percent greater than the separate rural jurisdictions in Zones 1 to 6 respectively.

Ponoka, Vegreville, and Vermilion were the only separate jurisdictions in the province, besides Edmonton and Fort McMurray, to have raised a supplementary requisition per resident student above the provincial weighted average. But Edmonton and Fort McMurray had an adjusted equalized assessment per resident student above the provincial average; Ponoka, Vegreville, and Vermilion did not. These three musketeers overcame the odds stacked against them by having net mill rates 28.9, 25.2, and 34.5 percent respectively greater than the provincial average applied to adjusted equalized assessments per resident student 10.5, 11.4, and 32.4 percent respectively less than the provincial average. Thus, the lesson to be learned from this parable was that when disadvantaged, make greater effort.

Ponoka, Vegreville, and Vermilion were only successful in achieving an above average supplementary requisition because their assessment disadvantage was relatively moderate compared with the majority of their brethren. For example, in Zone 1, Fort Vermilion, Grimshaw, McLennan, and Peace River had net mill rates 83.8, 38.9, 50.5, and 34.2 percent respectively greater than the provincial weighted average applied to adjusted equalized assessment per resident student that the provincial weighted average exceeded by 616.8, 190.8, 320.3, and 84.1 percent respectively. The provincial weighted average supplementary requisition per resident student was still 290.2, 109.2, 178.9, and 37.1 percent respectively greater than the requisition per resident student of our featured jurisdictions. After the SREG and other fiscal equalization grants were factored into the comparison, the measure of provincial weighted average supplementary requisition plus total fiscal equalization grants were 12.0, 23.5, 6.6, and 8.1 percent greater than the corresponding reference for the featured jurisdictions.

All the separate rural jurisdictions received revenue from the fiscal equalization grants, even the wealthiest, Fort Saskatchewan, the only separate rural jurisdiction with an adjusted equalized assessment per resident student above the provincial weighted average. The provincial weighted average adjusted equalized assessment per resident student at $55,208 was 73.0 percent greater, and the weighted average for the public rural jurisdictions at $49,086 was 55.7 percent greater than the weighted average for the separate rural jurisdictions at $31,905. The provincial weighted average adjusted assessment measure as modified for the fiscal equalization grants at $59,049 was 22.3 percent greater, and the weighted average for the public rural jurisdictions at $55,581 was 15.1 percent greater, than the weighted average for the separate rural jurisdictions at $48,275. Reducing a 73.0 percent variance to 22.3 percent and a 55.7 percent variance to 15.1 percent appears to have been significant equalization progress.

While Fort Saskatchewan's adjusted equalized assessment per resident student of $76,704 rounded to 10.0 times that enjoyed by Fort Vermilion at $7,702, Fort Saskatchewan's modified assessment measure of $82,464 was only 2.9 times that of Fort Vermilion at $28,698. In 1973, the measure of assessment for Fort Saskatchewan was 7.9 times that of Fort Vermilion. The fiscal equalization grants again appear to have made significant progress. However, all forts were still not created equal and a 2.9 times variance was still not acceptable.

The provincial weighted average instruction expenditure per enrolled student at $2,551 was 1.7, 14.0, 14.9, 11.2, and 13.4 percent greater than the weighted average instruction expenditure for separate rural jurisdictions in Zones 1, 2, 3, 5, and 6 respectively at $2,509, 2,237, 2,220, 2,294, and 2,249. The provincial weighted average was essentially the same as the weighted average for Zone 4 at $2,559. The variances from provincial weighted average for the public rural jurisdictions ranged from 0.7 to 9.6 percent. The variances for the separate rural jurisdictions in instruction expenditures were more significant. (It is noted that the instruction expenditures for Lousana Consolidated School District and Lakeland Separate District were excluded from the averages since their expenditures represent extreme outliers in comparison to other rural jurisdictions. Extraordinary amounts of Incremental Grant would have been the primary contributor to these two situations).

The weighted average instruction expenditures for the public rural jurisdictions were 1.0, 4.0, 9.5, 5.1, and 11.0 percent greater than the separate rural jurisdictions in Zones 1, 2, 3, 5, and 6 respectively. The weighted average for all public rural jurisdictions was 5.3 percent greater than for all separate rural jurisdictions (17.5 percent in 1973). Only in Zone 4 was the weighted average for the separate rural jurisdictions greater than the public rural jurisdictions by 6.2 percent. On average, an advantage in assessment still resulted in an advantage in the classroom.

Public rural jurisdictions in Zone 1 collected $284 more in requisition and fiscal equalization grants but spent only $25 more in the classroom than separate rural jurisdictions while in Zone 6 the publics collected only $36 more but invested $247 more than the separates; that appears to frame the extremes in jurisdiction decision making. In Zones 2 and 3, the advantage of the public rural jurisdictions over the separate rural jurisdictions in instruction expenditure exceeded the value of the advantage in requisition and fiscal equalization grants. In Zone 5, the publics' advantage in instruction expenditure was less than the publics' advantage in requisition and fiscal equalization grants, which is the scenario more expected where a portion of the advantage in revenue was spent on other functions in addition to instruction. In our Zone 4 anomaly, the public jurisdictions collected 3.9 percent more revenue but the separate jurisdictions invested 6.2 percent more in the classroom—an extraordinary effort. While an advantage in assessment still resulted, on average, in an advantage in the classroom, other funding and cost variance issues continued to impact investment in instruction, not the least of which was school board choice in allocating resources among expenditure functions.

Public Jurisdictions and their related Separate Jurisdictions. The review of equalization in the year 1983 has included all of the public jurisdictions and all of the separate jurisdictions. Appendix B-9 contains a more focused comparison of all separate jurisdictions with just those public jurisdictions in which the separate jurisdictions were located. Of the 89 public jurisdictions, 39 contained at least one separate jurisdiction (92 and 37 in 1973). Perhaps the comparisons between public jurisdictions and separate jurisdictions will change when the public jurisdictions containing no separate jurisdictions are excluded.

In Appendix B-9, the public jurisdictions containing separate jurisdictions are grouped into three jurisdiction types to assess variances: 16 school divisions, 12 counties, and 11 school districts. Lakeland School District is included with the school divisions since it is coterminous with the former Bonnyville School Division and placing it with the school divisions will provide a more appropriate comparison.

The weighted average assessment measure as modified for SFEG and the other fiscal equalization grants for the school divisions at $56,699 was 26.6 percent greater than the $44,800 for their separate counterparts. Both are disadvantaged in comparison to the provincial weighted average of $59,049, but the school divisions still have a noticeable advantage. The school divisions invested, at $2,426 per enrolled student, 2.5 percent less in classroom instruction than their separate jurisdictions at $2,487.

The weighted average modified adjusted equalized assessment per resident student for the counties at $50,696 was 1.9 percent less than the $51,669 for their separate counterparts. At $2,392 per enrolled student, the counties spent 4.8 percent more on classroom instruction than their separate jurisdictions at 2,282. However, this disadvantage in instruction expenditure for the separate jurisdictions within counties cannot be attributed to a disadvantage in modified adjusted equalized assessment. It can only be attributed to the choices made by the separate boards in the tax rates levied and in expenditure priorities.

The references for the public school districts do not vary much from those for the eight largest urban jurisdictions. Adding three additional smaller urban centres of Camrose, St. Paul, and Wetaskiwin had a modest impact on the weighted averages. The weighted average modified adjusted equalized assessment per resident student for the public school districts at $65,792 was 19.0 percent greater than the $55,288 for their separate counterparts. The public school districts spent, at $2,732 per enrolled student, 10.8 percent more on classroom instruction than their separate jurisdictions at $2,465.

In 1973, the school divisions had a 100.9 percent advantage in equalized assessment and an 11.8 percent advantage in instruction, the counties had a 142.8 percent advantage in equalized assessment and a 21.0 percent advantage in instruction, and the public school districts had a 49.7 percent advantage in equalized assessment and a 10.1 percent advantage in instruction over their separate jurisdiction counterparts. In 1983, the school divisions had a 26.6 percent advantage in equalized assessment, adjusted for EP&PL revenue and modified for the fiscal equalization grants, but the school divisions invested 2.5 percent less in classroom instruction than their separate jurisdictions. The counties had 1.9 percent less modified adjusted equalized assessment but spent 4.8 percent more in instruction. The public school districts had a 19.0 percent advantage in modified adjusted equalized assessment and a 10.8 percent advantage in instruction.

In 1973, the separate jurisdictions were disadvantaged in all three groupings but more so in the rural school divisions and counties, especially the counties. In 1983, the separate jurisdictions were disadvantaged from a modified adjusted equalized assessment perspective in only the school divisions and public school districts, but only in the public school districts did that disadvantage appear to have contributed to a significant disadvantage in instruction expenditure. Clearly, access for separate school jurisdictions to a share of undeclared corporate assessment, the increasing significance of the Ramsay Formula, and the fiscal equalization grants had all had a significant impact. But the impact of tax rates and expenditure priorities chosen by school boards can also be of significance.

In the aggregate summary for just the public jurisdictions containing separate jurisdictions, the weighted average assessment measure modified for SREG and the other fiscal equalization grants for the public jurisdictions at $61,682 was 14.2 percent greater than the $54,005 for the separate jurisdictions. At $2,629 per enrolled student, the public jurisdictions invested 7.3 percent more on classroom instruction than the separate jurisdictions at $2,450.

When the separate jurisdictions were compared to all public jurisdictions in Appendices B-4 and B-8, the public jurisdictions had a 12.7 percent advantage in modified adjusted equalized assessment and a 6.4 percent advantage in instruction expenditure. In looking only at the public jurisdictions containing those separate jurisdictions, the public jurisdictions had a 14.2 percent advantage in modified adjusted equalized assessment and a 7.3 percent advantage in instruction expenditure. When the public jurisdictions having no separate jurisdictions within their boundaries were deleted, the advantage to the public jurisdictions increased.

In 1973, a 7.5 percent advantage for public jurisdictions in instruction expenditure became a 9.1 percent advantage when those public jurisdictions having no separate jurisdictions were removed from the comparison. In 1983, a 6.4 percent advantage in instruction became a 7.3 percent advantage. The variance has declined, but only modestly.

Summary

Jefferson found that in 1980 the wealthiest school jurisdiction in equalized assessment was blessed with 46.2 times as much in assessment per "eligible pupil" than the poorest jurisdiction, up from 29.7 times as much in 1975 demonstrating the expanding variance in wealth. However, when the "total fiscal appropriations" consisting of supplementary requisition, fiscal equalization grants, and School Foundation Program Fund allocations were added together, the jurisdiction wealthiest in assessment still had 2.5 times more funds than the poorest jurisdiction, down from 3.1 times more funds in 1975. With respect to the impact of provincial funding, Jefferson concluded:

> …there appears to be little discrimination in the level of financial support extended to the poorest jurisdiction as compared to the financial support extended to the most affluent jurisdiction (Jefferson, 1982: p. 104).
>
> Milne concluded that the Supplementary Requisition Equalization Grant (SREG) resulted in a significantly greater degree of equalization of wealth than would have occurred without the grant (Milne, 1982: p. 93).

Milne also found that SREG did not equalize property tax rates or tax burden but did tend to equalize assessment per resident student at a given level of tax effort. However, SREG did not succeed in equalizing local revenue per student to the provincial average supplementary requisition per resident student. For Milne's study year of 1979:

> The total cost of the SREG support for the 136 jurisdictions was calculated at approximately $17.3 million. Providing revenue sufficient to equalize per pupil revenues to the average revenue per pupil for the jurisdictions in this study would require an estimated $41.9 million (Milne, 1982: p. 98).

Equalization reforms were thus constrained by inadequacies of provincial revenue and by equating equalization to leveling up rather than redistribution. Provincial government funding policies contrary to this philosophy were not particularly politically palatable. However, the save-harmless provision that guaranteed that jurisdictions would get not less than 80 percent of last year's SREG had a *disequalizing* impact by reducing funds available for poorer jurisdictions while wealthy jurisdictions continued to receive a disproportionate share of available resources (Jefferson, 1982; Milne, 1982).

With respect to separate jurisdictions, Jefferson determined that between 1975 and 1980 the separate jurisdictions received the greatest amount of provincial assistance in terms of tax relief (Jefferson, 1982). Milne's analysis found that the SREG funding did provide a statistically significant increase in the assessment wealth per student for rural school jurisdictions and separate school jurisdictions (Milne, 1982).

In 1983, the supplementary requisition represented 30.0 percent of total revenues for school jurisdictions compared to 12.9 percent in 1973. The percentage for 1983 became 32.1 percent when SREG and the other fiscal equalization grants were added to the supplementary requisition. Clearly, in 1983 inequities in the ability to produce supplementary requisition would potentially have had a much greater impact than they did in 1973. It is interesting to observe what a mere 2.1 percent in additional total revenue targeted at inequities can achieve.

Among all public jurisdictions and among all separate jurisdictions in 1983, jurisdictions in the eight largest urban centres continued to be, on average, advantaged in assessment, requisition, and instruction in comparison to the rural jurisdictions. However, those gaps had moderated compared to 1973.

CHAPTER EIGHT

THE EQUITY GRANT *and* A REVIEW OF FISCAL EQUALIZATION IN 1993

Introduction

In the previous chapter, a detailed analysis was made of the mature fiscal equalization effects of the Supplementary Requisition Equalization Grant (SREG) and the other fiscal equalization grants for the year 1983. It was concluded that larger urban jurisdictions generally had an advantage over smaller urban jurisdictions. Larger public rural jurisdictions were generally disadvantaged in comparison to smaller public rural jurisdictions while larger separate rural jurisdictions were generally advantaged over smaller separate rural jurisdictions. Separate urban jurisdictions and separate rural jurisdictions were disadvantaged in comparison to their public counterparts. These variances were similar to those observed in 1973 but the level of variance had generally diminished.

This chapter will move one more decade ahead to the year 1993 and examine the fiscal equalization effects of the School Foundations Program Fund (SFPF) as modified by the Equity Grant, which replaced the Supplementary Requisition Equalization Grant (SREG) and the other fiscal equalization grants.

The Equity Grant

In 1981, the Alberta Education ministry released a report on the Financing of K-12 Schooling in Alberta. This report noted that not all of the fiscal equalization grants were in fact producing general equalization impacts. The aggregate equalizing effect of the fiscal equalization grants appeared to be minimal, with the notable exceptions of the Supplementary Requisition Equalization Grant (SREG) and the Small School Jurisdiction Grant (Alberta Education, 1981). Jefferson concluded that "some school jurisdictions with a high equalized assessment per pupil received greater provincial support than less affluent school jurisdictions" (Jefferson, 1982: p. 207).

In 1982, the report from the Minister's Task Force on School Finance stated that, for 1982, SREG guaranteed a supplementary requisition per student yield of about 62 percent of the provincial average per student yield. The report noted that increasing SREG to produce a provincial average yield for all jurisdictions "would enable poorer jurisdictions to improve school programs" and "tend to equalize taxpayer effort" (Alberta Education, 1982: p. 18, 19). The Minister's Task Force recommended that the Supplementary Requisition Equalization Grant be increased to provide 100 percent of the provincial average requisition yield (Alberta Education, 1982: p. 32).

As a result, Alberta Education introduced the Management Finance Plan (MFP) in 1984. One of the most significant changes under the MFP was the development of a new equilization grant (Schmidt, 1988). The Equity Grant was introduced in 1985 as an attempt to address the inadequacies of the previous fiscal equalization grants. This one single grant replaced SREG and all of the other fiscal equalization grants, with one exception. The Incremental Grant, or contingency funding, continued to be available to jurisdictions in exceptional financial circumstances.

Equity Grant Development

The first principle of school finance stated by the Minister's Task Force on School Finance in its 1982 report was "the equalization of educational opportunity, and …fiscal equalization, insofar as it is compatible with equalization of educational opportunity" (Alberta Education, 1982, p. 7). The Equity Grant introduced in 1985 was "meant to compensate for conditions that result in education-related inequities that are beyond the control of school jurisdictions" (Schmidt, 1988: p. 7).

The Equity Grant consisted of three component grants based on three different demographic factors that could not be manipulated by school jurisdictions through a process known as "grantsmanship." The first and most fiscally significant component of the Equity Grant was Fiscal Capacity, which was similar to the former SREG. The other two components were Sparsity, which addressed the sparseness of a school jurisdiction's resident student population, and Distance, which addressed the distance of a school jurisdiction's central office from the nearest major supply centre of Edmonton, Calgary, Red Deer, Lethbridge, or Medicine Hat.

The calculations for the Equity Grant were based on the prior year's data since that was the latest information available, and made the Equity Grant a known number when the school boards prepared their budgets. For 1985, if a school jurisdiction's total Equity Grant was less than the sum of the 1984 fiscal equalization grants, then the jurisdiction received the greater of the 1985 Equity Grant or 80 percent of the sum of the 1984 grants. If a jurisdiction's 1985 Equity Grant was equal to or greater than the 1984 grants, then the jurisdiction received the lesser of the 1985 Equity Grant or 120 percent of the 1984 grants. The plan was to move these limits down or up in 20 percent increments in each succeeding year until the Equity Entitlement was fully implemented.

Alberta's school districts, both public and separate, and its school divisions completed a transition from a calendar fiscal year of January 1 to December 31 to a school fiscal year of September 1 to August 31 in either 1986 or 1987. By 1988, all of the counties were budgeting on the school year for school purposes, but all of the counties continued to be audited on the calendar year as required by applicable municipal legislation. Provincial funding allocations for schools were changed to coincide with the new fiscal year.

The most significant change by the 1992-93 school year was the clear evidence that the phase-in of the total Equity Grant had not evolved as initially intended. The province had ceased its initial reference to the total Equity Grant calculation as Equity Entitlement choosing instead the more future oriented term of Equity Potential. If the 1992-93 Equity Potential was less than the 1991-92 Equity Grant, then the 1992-93 Equity Grant was equal to the 1992-93 Equity Potential. If the 1991-92 Equity Grant was less than 50 percent of the 1992-93 Equity Potential, then the 1992-93 Equity Grant was equal to 50 percent of the 1992-93 Equity Potential. If the 1991-92 Equity Grant was between 50 percent and 100 percent of the 1992-93 Equity Potential, then the 1992-93 Equity Grant was equal to 1991-92 Equity Grant plus 9 percent of the difference between the 1991-92 Equity Grant and the 1992-93 Equity Potential (Alberta Education, 1992). Thus, all school jurisdictions with a declining Equity Grant calculation had been fully phased-in to their true Equity Grant calculation. But all those jurisdictions that were under-funded according to the Equity Grant calculation, continued, several years after the grant was first introduced, to be supported significantly below their entitlement according to the government's own calculations.

1993 Review of Equalization

For 1993, assessment comparisons were made on the basis of adjusted equalized assessment, as they were for 1983. Mill rate comparisons were again based on net mill rate. Just as the adjusted equalized assessments were modified for the calculated assessment value of SREG and the other fiscal equalization grants for 1983, the adjusted equalized assessments for 1993 were modified by the proportional assessment value of the relevant Equity Grants. Again, when divided by the number of resident students, this modified adjusted equalized assessment per resident student provided an appropriate comparison among school jurisdictions of the impact on local wealth provided by the Equity Grant. The amount of any Incremental Grant or contingency funding paid out in 1993 is no longer available and was not factored in to the calculation of modified adjusted equalized assessment per resident student but would potentially impact the amount of instruction expenditures per enrolled student.

For the 1993 review, Grades 1 to 12 resident student and enrolled student counts for September 30, 1993, assessment and requisition amounts for 1993, and the value of the Equity Grant paid to each school jurisdiction for 1993-94 were taken from the Financial and Statistical Report of Alberta School Jurisdictions (Alberta Education, 1994a). Grades 1 to 12 instruction expenditures for the 1993 calendar year for counties were also taken from that same Financial and Statistical Report. Grades 1 to 12 instruction expenditures for 1993-94 for school divisions and school districts, both public and separate, were taken from the Financial and Statistical Report of Alberta School Jurisdictions (Alberta Education, 1995).

Eight Largest Urban Centres. For 1993, a comparison of adjusted equalized assessment and supplementary requisitions per resident student, net mill rates, Equity Grants paid, and modified adjusted equalized assessment per resident student for public and separate jurisdictions in Alberta's eight largest urban centres is found in Appendix C-1. A comparison of Grades 1-12 instruction expenditure amounts per enrolled student for those same public and separate jurisdictions in Alberta's eight largest urban centres is found in Appendix C-5.

Among the eight largest urban jurisdictions, the larger urban jurisdictions generally had an advantage over smaller urban jurisdictions and public urban jurisdictions had an advantage over separate urban jurisdictions in the level of adjusted equalized assessment (as modified for the Equity Grant), the level of supplementary requisition produced, and the amount invested in classroom instruction. These variances had diminished somewhat by 1993 from 1983.

The weighted average adjusted equalized assessment per resident student for the eight public jurisdictions was $193,291. The weighted average for the eight publics was 11.2 percent greater than the mean average of $173,893 (19.5 in 1983, 23.5 in 1973). Calgary and Edmonton remained noticeably wealthier than five of the others, Fort McMurray again being the wealthiest.

The assessment measure for Edmonton public was 33.1 percent greater than Calgary public in 1973 and 9.8 percent greater than Calgary in 1983. For 1993, the assessment measure for Calgary public at $204,336 was 5.2 percent greater than Edmonton public at $194,148. Calgary's development rate had exceeded that of Edmonton in a dramatic way. Another interpretation is that the value of Calgary's property assessment had merely caught up to Edmonton.

The weighted average adjusted equalized assessment per resident student for the eight separate jurisdictions was $180,599. The corresponding reference for the eight publics was 7.0 percent greater compared to 26.6 percent greater in 1983 and 50.2 percent in 1973; the comparative gap has narrowed significantly. The weighted average for the eight separates was 8.5 percent greater than the mean average of $166,488 (12.2 percent in 1983, 34.5 in 1973). Fort McMurray separate was the wealthiest separate jurisdiction in the province at $279,159 and 1.8 percent wealthier than Fort McMurray public at $274,152. Calgary and Edmonton separates remained wealthier than the other five urban separates.

The weighted average for the eight publics was 1.3 percent greater than the provincial weighted average for all jurisdictions at $190,799 (18.9 percent greater in 1983, 24.8 percent greater in 1973). The provincial average was in turn 5.6 percent greater than average for the eight separate jurisdictions (6.5 percent greater in 1983, 20.4 percent greater in 1973).

The assessment measure for Edmonton separate was 64.3 percent greater than Calgary separate in 1973 and 16.4 percent greater than Calgary in 1983. For 1993, the assessment measure for Calgary separate was 3.9 percent greater than Edmonton separate. This mirrors the situation for the two public metros clearly demonstrating that Calgary's rate of development had exceeded that of Edmonton significantly. It is also noted that from 1973 to 1993 the degree of assessment growth for Calgary separate in comparison to Edmonton separate (from Edmonton at 64.3 percent greater to Calgary at 3.9 percent greater) traversed a greater gap than did Calgary public in comparison to Edmonton public (from Edmonton at 33.1 percent greater to Calgary at 5.2 percent greater).

Both the large urban public jurisdictions at 11.79 and large urban separate jurisdictions at 11.90 once again had slightly higher weighted average net mill rates than the provincial weighted average of 11.75. Calgary and Edmonton public and separate jurisdictions had net mill rates below the provincial average while the other six public and six separate urban jurisdictions had net mill rates above the provincial average. The mean average net mill rates of 12.81 and 12.60 for the eight public and eight separate jurisdictions respectively were 8.7 and 5.9 percent greater than the respective weighted average net mill rates. This is reflective that the smaller urban jurisdictions are carrying a larger mill rate burden than were the wealthier Calgary and Edmonton.

The weighted average requisition per resident student for the eight public urban jurisdictions at $2,279 was 1.7 percent greater than the provincial weighted average of $2,242 (20.1 percent greater in 1983 and 26.6 percent greater in 1973). The weighted average for the eight separate urban jurisdictions was $2,149; the provincial weighted average was 4.3 percent greater while the weighted average for the eight publics was 6.0 percent greater (3.2 and 24.0 percent greater in 1983, 18.4 and 50.0 percent greater in 1973). The mean average requisition per resident student was less than the weighted average for both public and separate urban jurisdictions reinforcing the advantage of larger urban jurisdictions over the smaller urban jurisdictions.

By 1993, the advantages larger urban jurisdictions generally had over smaller urban jurisdictions and public urban jurisdictions had over separate urban jurisdictions in the level of equalized assessment available and in the level of supplementary requisition produced had narrowed from 1983 and 1973. The purpose of the Equity Grant, like

SREG and the other fiscal equalization grants before it, was to reduce the impact of these variances.

Among the eight public urban and eight separate urban jurisdictions, only Calgary public and separate and Fort McMurray public and separate received no revenue from the Equity Grant. The weighted average adjusted equalized assessment per resident student for the eight public urban jurisdictions at $193,291 was 7.0 percent greater than the value for the eight separate urban jurisdictions at $180,599. The weighted average modified adjusted equalized assessment per resident student for the eight publics at $198,018 was 4.2 percent greater than the value for the eight separates at $190,115. Clearly the equity grant had made some progress here. These percentages were 26.6 on the adjusted measure and 19.5 on the modified adjusted measure in 1983 and the assessment gap between the eight public and separate urban jurisdictions was 50.2 percent in 1973.

Edmonton public's modified adjusted equalized assessment per resident student at $196,961 was 17.6 percent greater than Red Deer public at $167,504 and 28.9 percent greater than St. Albert public at $152,802. Edmonton public's instruction expenditure per enrolled student, Grades 1 to 12, at $3,854 was 4.1 percent great than Red Deer public at $3,702 and 5.1 percent greater than St. Albert public at $3,666.

Edmonton separate's modified measure of assessment at $193,508 was 25.2 percent greater than Red Deer separate at $154,533 and 27.8 percent greater than St. Albert separate at $151,389. Edmonton separate's instruction expenditure per enrolled student at $3,652 was 8.1 percent greater than Red Deer separate at $3,377, but St. Albert separate's instruction expenditure at $3,891 was 6.5 percent greater than Edmonton separate. Choices made by boards again in allocating revenues between expenditure functions also play a role in determining the level of classroom investment.

The weighted average modified adjusted equalized assessment per resident student for the eight public jurisdictions was 4.2 percent greater than the eight separate jurisdictions. The weighted average instruction expenditure per enrolled student for the eight public jurisdictions at $3,933 was nearly the same as the provincial weighted average of $3,954 and 5.7 percent greater than the weighted average for the eight separate jurisdictions at $3,722 (11.2 percent greater in 1983 and 9.9 percent greater in 1973). For the eight largest urban centres in 1993, it appeared that an advantage in the level of equalized assessment translated, on average, into a greater investment in resources for the classroom. Public urban jurisdictions were generally able to invest more in the classroom than separate jurisdictions.

Public Rural Jurisdictions. A comparison of adjusted equalized assessments and supplementary requisitions per resident student, net mill rates, Equity Grants paid, and modified adjusted equalized assessment per resident student for all public jurisdictions operating one or more schools for 1993, excluding the eight largest urban centres, is found in Appendix C-2. A comparison of Grades 1-12 instruction expenditure amounts per enrolled student for those same public jurisdictions for 1993 is found in Appendix C-6. These public rural jurisdictions are again grouped into the six geographical zones.

In Zone 1, St. Isidore School District was now operating as an autonomous school district. In Zone 3, Leduc School District was now autonomous and Twin Rivers School Division had been established. In Zone 4, Lousana Consolidated was no longer an autonomous school district.

The 83 public rural jurisdictions (81 in 1983 and 84 in 1973) varied greatly in size from St. Isidore School District with 66 resident students to County of Strathcona with 12,577 resident students.

Smaller public rural jurisdictions were generally wealthier than larger public rural jurisdiction, which was opposite to the situation found in the eight largest urban jurisdictions. The significance of this had increased dramatically compared to 1983. This translated into an advantage in requisition and instruction dollars and continued to provide an even stronger incentive for some public rural jurisdictions to remain small. Public rural jurisdictions were now advantaged in comparison to the provincial weighted average assessment as adjusted for linear revenue. The balance of wealth had shifted dramatically from the large public urban centres to the public rural jurisdictions. This shift is primarily the result of the dramatic growth in tax revenue on linear property.

The weighted average adjusted equalized assessment per resident student was $254,780, 157,674, 192,789, 213,300, 230,497, and 192,721 in Zones 1 to 6 respectively compared to a weighted average for all public rural jurisdictions of $204,802 and a provincial weighted average of $190,799. Among the public rural jurisdictions, those in Zones 1, 4, and 5 were advantaged but all zones except Zone 2 were above the provincial average. Only Zone 5 exceeded the provincial average in 1983 and 1973. For 1993, Zone 5 exceeded the provincial average by 20.8 percent, close to the 20.2 percent advantage for 1983, which was up from 13.9 percent in 1973. It is Zone 1 that had changed most significantly. Zone 1 was the wealthiest zone for 1993 with an assessment measure 33.5 percent above the provincial weighted average. The provincial weighted average was 18.6 percent greater than the Zone 1 weighted average in 1983 and 77.1 percent greater in 1973. While the relative advantage for Zone 5 appeared to have reached a plateau by 1983, Zone 1 had surged forward most dramatically.

For 1993, the weighted average adjusted assessment measure for the public rural jurisdictions was 7.3 percent greater than the provincial weighted average. In 1983, the provincial weighted average was 10.8 percent greater and, in 1973, the provincial average was 18.9 percent greater. What this means is that by 1993 the balance of wealth had shifted from the large public urban centres to the public rural jurisdictions. The weighted average for the public rural jurisdictions was 6.0 percent greater than the weighted average for the eight largest public urban jurisdictions. In 1983, the weighted average for the public urban jurisdictions was 33.7 percent greater. In 1973, the public urban average was 48.4 percent greater. These large shifts were primarily the result of the dramatic growth in tax revenue on linear property under the Ramsay formula.

It should be noted that a shift in the balance of wealth from the large public urban centres to the public rural jurisdictions is not necessarily a bad thing. Based on the premise that large urban centres are generally able to operate larger schools than rural jurisdictions and larger schools generally cost less per student to operate than smaller schools, perhaps the public urban and rural jurisdictions are finally getting more of an appropriate balance. But averages are not the whole story.

While the balance of wealth had shifted to the public rural jurisdictions, the spread of wealth among the public rural jurisdictions had grown exponentially. Among the school divisions and counties, the wealthiest was Berry Creek School Division with an adjusted equalized assessment per resident student of $3,176,795. Lac La Biche School Division was the poorest with $90,063. The wealthiest school division exceeded the poorest by a factor of 35.3 times. In 1983, the same school divisions occupied first and last place but the factor was 16.0. In 1973, the factor was 10.6, although there were different first and last place winners. For Berry Creek and Lac La Biche, the assessment spread grew 50.9 percent between 1973 and 1983 and 120.6 percent between 1983 and 1993.

The mean average adjusted equalized assessment per resident student for the public rural jurisdictions at $292,087 was 42.6 percent greater than the weighted average (24.8 percent greater in 1983 and 26.8 percent greater in 1973). The smaller public rural jurisdictions remained, on average, wealthier than the larger public rural jurisdictions but the significance of that had increased dramatically between 1983 and 1993. This was opposite to the situation with the eight largest public urban jurisdictions where the larger jurisdictions were generally wealthier than smaller jurisdictions but the significance of that variance had diminished.

The provincial weighted average net mill of 11.75 exceeded the weighted averages for Zones 1, 4, 5, and 6 at 10.39, 9.73, 10.51, and 10.08 respectively by 13.1, 20.8, 11.8, and 16.6 percent. All four of these zones had an assessment measure above the provincial average.

The provincial weighted average supplementary requisition per resident student at $2,242 was above the weighted average of $1,879, 2,075, and 1,943 for Zones 2, 4, and 6 respectively by 19.3, 8.0, and 15.4 percent. The weighted average for Zones 1, 3, and 5 at $2,647, 2,431, and 2,422 exceeded the provincial weighted average by 18.1, 8.4, and 8.0 percent respectively. Zone 1 was significantly disadvantaged in assessment in both 1983 and 1973 but had mill rates noticeably above the provincial average both times. Unfortunately, their measure of requisition was still below the provincial average both times. Now that Zone 1 had become, on average, the wealthiest zone in the province in assessment, it benefited from the highest return in requisition. But by 1993 it achieved that with a below average net mill rate. Such were the rewards of wealth. But it is comforting to see what was the poorest Zone in 1973 morph itself into the land of plenty thanks to the generosity of such chance occurrences as linear revenue and the new Diashawa pulp mill.

The weighted average requisition per student for all public rural jurisdictions at $2,273 exceeded the provincial weighted average by a modest 1.4 percent. This becomes significant when it is remembered that the provincial average exceeded the average for all public rural jurisdictions by 18.2 percent in 1983 and 21.6 percent in 1973. This is once again indicative of that shift in assessment wealth among the public jurisdictions from the eight largest urban jurisdictions to the rural jurisdictions.

The mean average supplementary requisition per resident student for all public rural jurisdictions at $2,569 was 13.0 greater than the weighted average (8.6 percent greater in 1983 and 22.5 percent greater in 1973). This mirrored the comparison of mean average adjusted assessment measure with the weighted average and reinforces the observation that, on average, the smaller public rural jurisdictions were advantaged over the larger public rural jurisdictions. That advantage appeared to have diminished between 1973 and 1983 but by 1993 appeared to be going back up.

Unlike 1983 when Exshaw School District was the only public rural jurisdiction that received no SREG or other fiscal equalization grants, 32 of the 83 public rural jurisdictions received no Equity Grant for 1993. The weighted average adjusted equalized assessment for all public rural jurisdictions at $204,802 was 7.3 percent greater than the provincial weighted average at $190,799. The weighted average modified adjusted equalized assessment for all public rural jurisdictions at $225,139 was 11.0 percent greater than the provincial weighted average at $202,887. In 1983, the provincial average adjusted assessment measure exceeded that for the public rural jurisdictions by 12.5 percent while the provincial average modified measure exceeded that for the public rural jurisdictions by 6.2 percent; SREG and the other fiscal equalization grants had cut the disadvantage in half. In 1993, the adjusted measure for the public rural jurisdictions was already above the provincial average and the modified adjusted measure for the public rural jurisdictions only increased the variance with the provincial average. This was the result of jurisdictions receiving their full Fiscal Capacity entitlements based on a minimum of 88 percent of the prior year's provincial average requisition per resident student with a minimum net mill rate effort of 88 percent of the prior year's provincial average. Also, even if the Fiscal Capacity component was insignificant, entitlements under the Sparsity and Distance components may not have been.

While the 1993 adjusted equalized assessment measure for Berry Creek School Division was 35.3 times that of Lac La Biche School Division compared to 16.0 times in 1983, the 1993 modified assessment measure for Berry Creek is 21.6 times that of Lac La

Biche compared to 8.7 times in 1983. In 1993, the Equity Grant reduced the spread from wealthiest to poorest division or county from 35.3 to 21.6 times or by 38.8 percent. In 1983, SREG and the other fiscal equalization grants reduced the spread from 16.0 to 8.7 times or by 45.6 percent. In 1983, Berry Creek invested $3,787 in instruction expenditure per enrolled student, 59.3 percent greater than Lac La Biche at $2,378. In 1993, Berry Creek invested $7,794 in the classroom, 81.2 percent greater than Lac La Biche at $4,301. The growing spread among public rural jurisdictions in the modified adjusted assessment measure has also translated into a disturbing level of growth in the spread in classroom investment.

Separate Rural Jurisdictions. A comparison of adjusted equalized assessments and supplementary requisitions per resident student, net mill rates, Equity Grants paid, and modified adjusted equalized assessment per resident student for all separate jurisdictions operating one or more schools for 1993, excluding the eight largest urban centres, is found in Appendix C-3. A comparison of Grades 1-12 instruction expenditure amounts per enrolled student for those same separate jurisdictions for 1993 is found in appendix C-7. These separate rural jurisdictions, like their public counterparts, are again grouped into the six geographical zones.

Of the 40 separate districts in this rural group (41 in 1983 and 38 in 1973), Glen Avon was still the only Protestant separate district. The other 39 separate districts were Roman Catholic. In Zone 1, Beaverlodge and Sexsmith were now part of Grande Prairie Separate District, one of the eight major urban centres. Grimshaw, Manning, Nampa and Peace River had amalgamated to become North Peace Separate District. Fort Vermilion Separate District was no longer operating as an autonomous separate district; its one school was being operated by the public jurisdiction, Fort Vermilion School Division, under contract to the separate board. Slave Lake Separate District had been established. In Zone 5, Airdrie, Cochrane, and Foothills Separate Districts had been established and, in Zone 6, Old Mossliegh Separate District had been established. The separate rural jurisdictions varied significantly in size from Assumption at 37 resident students to Sherwood Park with 3,098.

As in 1973 and 1983, larger separate rural jurisdictions were generally wealthier than the smaller separate rural jurisdictions, the opposite of the public rural jurisdictions, suggesting that expanding remained a potential, if not essential, method for separate rural jurisdictions to increase their assessment wealth. The disadvantage of the separate rural jurisdictions in comparison to the public rural jurisdictions in assessment, requisition, and instruction had worsened under the Equity Grant in comparison to SREG and the other fiscal equalization grants in 1983.

The weighted average adjusted equalized assessment per resident student was $161,003, 155,992, 154,163, 121,846, 123,754, and 158,997 in Zones 1 to 6 respectively compared to a weighted average for all separate rural jurisdictions of $150,565. While in both 1973 and 1983, separate rural jurisdictions in Zone 1 were at the greatest disadvantage, in 1993 they were at the greatest advantage. This mirrors the situation with the public rural jurisdictions where Zone 1 also newly occupied the lead position. For the separate rural jurisdictions in Zone 1, this change of status was largely explained by a single factor. The newly amalgamated North Peace Separate District represented 41.7 percent of the Zone's resident student count and was blessed with an adjusted equalized assessment measure of $222,932, 16.8 percent above the provincial weighted average of $190,799 and 91.4 percent greater than the balance of the separate rural jurisdictions in Zone 1 with North Peace excluded at $116,718. This impressive standing for North Peace is primarily the result of its per resident student share of the assessment from that marvelous new Diashawa pulp mill. North Peace was now one of only six separate rural jurisdictions, including Drayton Valley, Fort Saskatchewan, Hinton, Pincher Creek, and Whitecourt to have a weighted average adjusted assessment measure above the provincial average. In 1983, Fort Saskatchewan was alone in this exalted position. All of these separate rural jurisdictions contain major industrial development. These jurisdictions purposely led the establishment of adjacent new separate districts with which they amalgamated in order to expand their boundaries to take in major industrial developments and to increase their share of linear assessment under the Ramsey formula. Boundary expansion beyond the separate district's core population base also consistently added more geography than students, increased its area per resident student and produced a larger entitlement under the Sparsity component of the Equity Grant.

The Zone weighted average adjusted equalized assessments per resident student for the public rural jurisdictions were 58.2, 1.1, 25.1, 75.1, 86.3, and 21.2 percent greater than those for the separate rural jurisdictions in Zones 1 to 6 respectively. The weighted average for all public rural jurisdictions was 36.0 percent greater and the provincial weighted average was 26.7 percent greater than the weighted average for all separate rural jurisdictions (53.9 and 73.0 percent in 1983; 120.4 and 162.0 percent in 1973). Separate rural jurisdictions remain at a distinct disadvantage in comparison to public rural jurisdictions. It is clear that access to a proportional share of undeclared corporate assessment and increasing access through boundary expansion to a growing linear assessment had assisted in narrowing this variance. SREG and the other fiscal equalization grants in 1983 and the Equity Grant in 1993 had also played a role.

For 1993, the wealthiest separate rural jurisdiction in the province was again Fort Saskatchewan with a weighted adjusted assessment measure of $252,269. Valleyview was the poorest with $79,605. The wealthiest separate rural jurisdiction exceeded the poorest by a factor of 3.2. The factor was 35.3 between the wealthiest and poorest school division or county. While there was a significant spread in the assessment wealth of separate rural jurisdictions, it pales in comparison to the spread for school divisions and counties. In 1983, Fort Saskatchewan and Valleyview had a factor of 6.0; in 1973, the factor separating these same two jurisdictions was 4.1. The assessment spread grew 46.3 percent between 1973 and 1983 but then declined by 46.7 percent from 1983 to 1993.

The weighted average adjusted equalized assessment per resident student for all separate rural jurisdictions in 1993 was 6.9 percent greater than the mean average. This reminds us that among the majority of separate rural jurisdictions, as in 1983 and 1973, the larger jurisdictions were wealthier than the smaller jurisdictions, which was opposite to the public rural jurisdictions. This continues to be reflective of the incentive for separate jurisdictions to become larger.

There were a few instances of separate rural jurisdictions influencing the establishment of adjacent separate districts but not amalgamating with them. Such adjacent separate jurisdictions were referred to as satellite districts since they did not operate their own schools. The most notable example was Castle Separate District adjacent to our separate rural jurisdiction wealth-leader, Fort Saskatchewan. Castle contained few students but encompassed Shell Canada's Scotford Refinery. The split of undeclared corporate assessment in proportion to the number of resident students was more favourable to the separate system within the coterminous Castle public and separate districts than it would have been within the coterminous Fort Saskatchewan public and separate districts. The separate jurisdictions chose not to amalgamate for sound financial reasons. For 1993, Castle gave Fort Saskatchewan access to an additional 25.1 percent in adjusted equalized assessment but added less than one percent more students.

Some of these non-operating jurisdictions were able to maintain low mill rates and serve as tax havens. For example, Big Eddy, Gartley, Morning Glory, Shilo, and White Rose separate districts had net mill rates of 1.01, 2.22, 2.23, 2.83, and 1.90 respectively. But Castle's net mill rate of 13.49 was within one percent of the 13.66 for Fort Saskatchewan. Thus, nearly all of the advantage of access to significant additional adjusted equalized assessment in Castle was translated into real growth in requisition dollars for Fort Saskatchewan. The discussions of separate rural jurisdictions in this chapter ignore the financial impact of any satellite separate districts, of which Castle was the only one to have an impact of any real significance.

Zone 1 had the highest weighted average adjusted equalized assessment measure but also had the highest weighted average net mill rate, 20.6 percent above the public rural jurisdictions in Zone 1. Was this a case of the wealthiest separate jurisdictions in Zone 1 being greedy by placing a higher demand on their property taxpayers? When it is understood that the weighted average adjusted assessment measure for public rural jurisdictions in Zone 1 was 58.2 percent greater than for separate rural jurisdictions and that the resultant weighted average supplementary requisition per resident student for public rural jurisdictions in Zone 1 at $2,647 was still 24.0 percent greater than for separate rural jurisdictions at $2,134, the answer becomes more obvious. The separate rural jurisdictions in Zone 1 were making the greater effort in tax burden in an attempt to more closely compete with their public counterparts. Despite Zone 1 separate rural jurisdictions being the wealthiest separate Zone and having the highest weighted average net mill rate among the separate Zones, the provincial average supplementary requisition per resident student at $2,242 still exceeded the weighted average requisition for separate rural jurisdictions in Zone 1 by 5.1 percent.

Separate rural jurisdictions in Zone 4 had the lowest weighted average adjusted equalized assessment per resident student yet had a weighted average net mill rate noticeably below the provincial weighted average. Why wouldn't the poorest separate Zone make a tax effort at least at the provincial average level, if not higher? The weighted average net mill rate for separate rural jurisdictions in Zone 4 was 6.3 percent greater than their public counterparts and that was the more significant reality. The separate rural jurisdictions were able to carry a certain premium on the comparative tax rates and perhaps Zone 4 separate jurisdictions could have made even more effort, but separate jurisdictions were also very conscious of not pricing themselves out of the range of those whose support was flexible.

The provincial weighted average supplementary requisition per resident student at $2,242 was above the weighted average of $2,134, 1,833, 1,932, 1,260, 1,598, and 1,579 for separate rural jurisdictions in Zones 1 to 6 respectively by 5.1, 22.3, 16.0, 77.9, 40.3, and 42.0 percent. The weighted average supplementary requisition per resident student for the public rural jurisdictions in each of the six zones was 24.0, 2.5, 25.8, 64.7, 51.6, and 23.1 percent greater than the separate rural jurisdictions in Zones 1 to 6 respectively.

The weighted average supplementary requisition per resident student for all separate rural jurisdictions was 11.8 percent greater than the mean average (4.0 percent greater in 1983). This again mirrors the comparison of the weighted average adjusted equalized assessment measure with the mean average. Larger separate rural jurisdictions were advantaged in requisition over the smaller separate rural jurisdictions and that advantage had grown since 1983.

Cochrane, Fort Saskatchewan, North Peace, and Whitecourt were the only separate jurisdictions in the province, besides Fort McMurray, to have raised a supplementary requisition per resident student above the provincial weighted average. Fort Saskatchewan, North Peace, and Whitecourt are three of the six separate rural jurisdictions previously noted as having a weighted average adjusted equalized assessment measure above the provincial average. Cochrane got into this group with an adjusted equalized assessment measure less than one percent lower than the weighted provincial average but a net mill rate 14.0 percent above the weighted provincial average.

Cochrane and Fort Saskatchewan, along with Pincher Creek, another of the six separate rural jurisdictions with an above average assessment measure, were unique among separate rural jurisdictions in that they had a greater adjusted equalized assessment than their public counterparts. These three separate jurisdictions had accessed a share of significant assessment in a relatively small geographical area. That assessment was shared in proportion to the public and separate resident students living within boundaries coterminous with the separate jurisdiction. In calculating the adjusted equalized assessment for the public counterparts of Rocky View School Division, County of Strathcona, and Pincher Creek School Division, the public system's share of that assessment was spread among more students living in a much larger geographical area.

Cochrane was left in the unique position among all separate jurisdictions in the province as the only separate jurisdiction to have a greater requisition per resident student than its public counterpart. Cochrane's requisition measure at $2,541 was 5.9 percent above that for Rocky View School Division at $2,400 and 13.3 percent above the weighted provincial average at $2,242. No wonder Cochrane could be comfortably satisfied with Rocky View exceeding its net mill rate by 4.0 percent.

Killam, Valleyview, and Wainwright had the lowest adjusted equalized assessment per resident student of any separate jurisdictions in the province. In comparing them to their public counterparts of County of Camrose, East Smoky School Division, and Wainwright School Division respectively, the assessment measures for these public jurisdictions exceeded the separate jurisdictions by 67.6, 614.2, and 155.3 percent. The supplementary requisition per resident student for these three publics exceeded the three separates by 106.4, 400.9, and 169.2 percent respectively. The requisition disadvantage for Killam and Wainwright was greater than their assessment disadvantage. This resulted from them attempting to run very lean operations and keep net mill rates attractively below their public counterparts by 23.0 and 5.4 percent respectively.

Valleyview was the poorest and most diadvantaged separate jurisdiction in the province. East Smoky had an adjusted equalized assessment measure of $568,504, 3.0 times the provincial weighted average of $190,799 and 7.1 times Valleyview at $79,605. East Smoky had a net mill rate of 5.93, half of the provincial average of 11.75 and produced a supplementary requisition per resident student of $3,371, 1.5 times the provincial average of $2,242 and 5.0 times Valleyview at a pathetic $673. Even after the Equity Grant is factored into the comparison, supplementary requisition dollars plus

Equity Grant dollars per resident student for Valleyview jumped up to $1,072. East Smoky was mercifully one of the 32 public rural jurisdictions that received no Equity Grant, but East Smoky's requisition yield is still 3.1 times the combined yield for Valleyview of requisition and Equity Grant per resident student. Valleyview had a net mill rate of 8.45, 42.5 percent higher than East Smoky. Only the most ardent supporters paid school taxes that much higher than the alternative public system. In 1983, Valleyview had 323 resident students; in 1993, it had 150. The number of resident students for East Smoky grew slightly over that same decade. Valleyview Separate was literally starving to death.

In 1983, all separate rural jurisdictions received revenue from the fiscal equalization grants. In 1993, Cochrane, Fort Saskatchewan, Hinton, North Peace, Pincher Creek, and Whitecourt received no funding under the Equity Grant. These were the wealthiest separate rural jurisdictions that, as previously discussed, were relatively advantaged.

For 1993, the provincial weighted average adjusted equalized assessment per resident student at $190,799 was 26.7 percent greater, and the weighted average for the public rural jurisdictions at $204,802 was 36.0 percent greater, than the weighted average for the separate rural jurisdictions at $150,565. The provincial weighted average modified adjusted equalized assessment per resident student at $202,887 was 11.6 percent greater, and the weighted average modified measure for the public rural jurisdictions at $225,139 was 23.9 percent greater, than the weighted average modified measure for the separate rural jurisdictions at $181,724. Reducing a 26.7 percent variance (from the provincial average) to 11.6 percent and a 36.0 percent variance (from the average for public rural jurisdictions) to 23.9 percent provides evidence of the proportional impact of the Equity Grant.

In 1983, SFEG and the other fiscal equalization grants reduced the weighted average assessment variance of separate rural jurisdictions in comparison to the provincial average from 73.0 percent to 22.3 percent and in comparison to the public rural jurisdictions from 53.9 percent to 15.1 percent. It is clear that a reduction of 50.7 percentage points on the provincial average comparison and of 38.8 percentage points on the comparison with the public rural jurisdictions under the fiscal equalization grants in

1983 was a much more significant accomplishment than a reduction of 15.1 (26.7-11.6) and 12.1 (36.0-23.9) percentage points respectively under the Equity Grant in 1993. While the separate rural jurisdictions ended with a more favourable modified variance from the provincial average in 1993 of 11.6 percent rather than 22.3 percent in 1983, the modified variance from the public rural jurisdictions actually worsened in 1993 at 23.9 percent rather than 15.1 percent in 1983. It was the amount of resources available to the separate jurisdictions in comparison to their public counterparts that was the only critical reality. In 1993 under the Equity Grant, on average, separate rural jurisdictions were worse off than they were under SREG and the other fiscal equalization grants in 1983.

While the 1993 adjusted equalized assessment measure for Fort Saskatchewan was 3.2 times that of Valleyview compared to 6.0 times in 1983, the 1993 modified adjusted assessment measure for Fort Saskatchewan was 1.4 times that of Valleyview and also 1.4 times that of Valleyview in 1983. In 1993, the Equity Grant reduced the spread from wealthiest to poorest separate rural jurisdiction from 3.2 to 1.4 times or by 56.3 percent. In 1983, the fiscal equalization grants reduced the spread from 6.0 to 1.4 times or by 76.7 percent. While the spread ended at the same factor under both the fiscal equalization grants in 1983 and the Equity Grant in 1993, the fiscal equalization grants traversed a greater challenge in arriving at that factor.

The provincial weighted average instruction expenditure per enrolled student at $3,954 was 3.3, 8.2, 12.4, 14.9, and 14.1 percent greater than the weighted average instruction expenditure for separate rural jurisdictions in Zones 1, 3, 4, 5, and 6 respectively at $3,826, 3,654, 3,519, 3,440, and 3,465. Assumption, Foothills, Killam, Old Mossleigh, Provost, and Vermilion instruction expenditures were excluded from these averages since their expenditures represented extreme outliers in comparison to other rural jurisdictions. It is probable that Incremental Grants or other sources of funding contributed to these anomalies. Zone 2 with a weighted average instruction expenditure at $4,083 that was 3.3 percent above the provincial average had a weighted average modified adjusted assessment measure that the provincial weighted average exceeded by 5.4 percent. School board priorities in expenditure functions or Incremental Grants may have played a role in this difference.

The weighted average instruction expenditure for public rural jurisdictions exceeded those in separate rural jurisdictions in Zones 1, 3, 4, 5, and 6 respectively by 23.0, 9.1, 8.9, 14.4, and 13.2 percent. Zone 2 is once again the anomaly. The public rural jurisdictions in Zone 2 had a weighted average modified assessment measure that was a modest 1.2 percent above the measure for separate rural jurisdictions, yet the Zone 2 separate rural jurisdictions invested 4.0 percent more in instruction expenditure.

Public Jurisdictions and their related Separate Jurisdictions. The review of equalization in the year 1993 has included all of the public jurisdictions and all of the separate jurisdictions. Appendix C-9 contains a more focused comparison of all separate jurisdictions with just those public jurisdictions in which the separate jurisdictions were located. Of the 91 public jurisdictions, 41 contained at least one separate jurisdiction. The comparisons between public jurisdictions and separate jurisdictions may change when the public jurisdictions containing no separate jurisdictions are excluded.

In Appendix C-9, the public jurisdictions containing separate jurisdictions are grouped into three jurisdiction types to assess variances: 18 school divisions, 10 counties, and 13 school districts. There were 12 counties containing separate jurisdictions in 1973 and 1983 but only 10 in 1993. The separate districts of Beaverlodge and Sexsmith in the County of Grande Prairie had amalgamated with the separate district in the City of Grande Prairie and for 1993 were parts of the eight large urban jurisdictions. When Whitecourt School District became an autonomous public district, it became the public counterpart for Whitecourt Separate District rather than the County of Lac St. Anne. Lakeland School District is once again included with the school divisions to provide a more appropriate comparison since it was coterminous with the former Bonnyville School Division.

The previously noted extreme outliers for instruction expenditure of Assumption, Foothills, Killam, Old Mossleigh, Provost, and Vermilion and their public counterparts were deleted from the aggregate values compiled in Appendix C-9. Lakeland public and separate were also deleted from the aggregate values as the separate jurisdiction's instruction expenditure was significantly more than the public's but the separate's modified adjusted assessment measure was not. Lakeland separate is known to this researcher to have been a recipient of significant Incremental Grant funding. These adjustments provided aggregate comparisons much more reflective of the large majority of separate jurisdictions.

The weighted average assessment measure as modified for the Equity Grant for the school divisions at $257,972 was 35.3 percent greater than the $190,601 for their separate counterparts. This variance was 26.6 percent in 1983. The variance for separate jurisdictions from their school divisions with which they compete for students had worsened significantly. The modified adjusted assessment measure for the school divisions was 27.2 percent above the provincial weighted average of $202,887. In 1983, the provincial weighted average exceeded the weighted average for the school divisions by 4.1 percent. For 1993, the provincial weighted average exceeded the weighted average for separate jurisdictions in school divisions by 6.4 percent compared to 31.8 percent in 1983. The plight of both the separate jurisdictions and their school division counterparts had improved, but the situation for school divisions had improved noticeably more than it had for their separate jurisdictions. The school divisions invested, at $3,753 per enrolled student, 9.8 percent more in classroom instruction than their separate jurisdictions at $3,419. The school divisions invested 2.5 percent less than their separate jurisdictions in 1983. It would appear that the growing variance in available resources had a noticeable impact in the classroom.

The weighted average modified adjusted equalized assessment per resident student for the counties at $203,277 was 10.9 percent greater than the $183,351 for their separate counterparts. The measure for the counties was 1.9 percent less than their separate jurisdictions in 1983. The variance for separate jurisdictions from their counties had worsened significantly, although the comparison was still more favourable than it was for separate jurisdictions in the school divisions. The modified adjusted assessment measure for the counties was virtually the same as the provincial weighted average. In 1983, the provincial weighted average exceeded the weighted average for the counties by 16.5 percent. For 1993, the provincial weighted average exceeded the weighted average for separate jurisdictions in counties by 10.7 percent compared to 14.3 in 1983. The available resources of both the separate jurisdictions and their county counterparts had improved, but the situation for counties, like school divisions, had improved noticeably more than it had for their separate jurisdictions. The counties invested, at $3,988 per enrolled student, 9.7 percent more in classroom instruction than their separate jurisdictions at $3,636. The counties invested 4.8 percent more than their separate jurisdictions in 1983. As with school divisions, the growing variance in available resources was consistent with a growing variance in investment in the classroom.

The references for the public school districts do not vary much from those for the eight largest urban jurisdictions. The addition of five smaller urban centres of Camrose, Leduc, St. Paul, Wetaskiwin, and Whitecourt had a modest impact on the weighted averages. The weighted average modified adjusted equalized assessment per resident student for the public school districts at $196,783 was 4.0 percent greater than the $189,136 for their separate counterparts. This variance was 19.0 percent in 1983. Unlike the variance for separate jurisdictions from their school division and county counterparts, the variance for separate jurisdictions from their public school districts had improved significantly. The provincial weighted average modified adjusted assessment measure exceeded both the public school districts and their separate jurisdiction counterparts by 3.1 and 7.3 percent respectively. In 1983, the weighted average modified adjusted assessment measure for the public school districts exceeded the provincial weighted average by 11.4 percent, which in turn exceeded the weighted average for the separate jurisdictions by 6.8 percent. The variance from the provincial average worsened only slightly for the separate jurisdictions but worsened significantly for the public school districts. The public school districts spent, at $3,929 per enrolled student, 5.5 percent more on classroom instruction than their separate jurisdictions at $3,724. In 1983, the public school districts spent 10.8 percent more on classroom instruction.

In 1993, the weighted average modified assessment measure for school divisions, counties, and public school districts exceeded the measure for their separate jurisdictions by 35.3, 10.9, and 4.0 percent respectively. In 1983, the measure for school divisions was 26.6 percent greater, the measure for counties was 1.9 percent less, and the measure for public school districts was 19.0 percent greater than their separate jurisdictions. For 1993, the ability of separate jurisdictions to offer instructional programs in competition with their public counterparts had improved dramatically in public school districts while it had worsened dramatically in both school divisions and counties. It is indeed ironic that in school divisions, where the measure for separate jurisdictions had improved most dramatically in comparison to the provincial weighted average and compared most favourably with it, was found the source of the most dramatic variance between the separate jurisdictions and their public counterparts. The shift in wealth from the large urban jurisdictions to the rural jurisdictions impacted public jurisdictions much more significantly than separate jurisdictions leaving separate jurisdictions better off in urban areas and worse off in rural areas.

In the aggregate summary for the public jurisdictions containing separate jurisdictions, the weighted average assessment modified for the Equity Grant for the public jurisdictions at $205,706 was 8.9 greater than the $188,863 for the separate jurisdictions. At $3,911 per enrolled student, the public jurisdictions invested 5.8 percent more in classroom instruction than the separate jurisdictions at $3,696.

When the separate jurisdictions were compared to all public jurisdictions in Appendices C-4 and C-8, the public jurisdictions had an 11.7 percent advantage in modified adjusted equalized assessment and a 6.8 percent advantage in instruction expenditure. In looking only at the public jurisdictions containing those separate jurisdictions, the public jurisdictions had an 8.9 percent advantage in modified adjusted equalized assessment and a 5.8 percent advantage in instruction expenditure. When the public jurisdictions having no separate jurisdictions within their boundaries were deleted, the advantage to the public jurisdictions decreased. This provides evidence that, in 1993, the public jurisdictions containing no separate jurisdictions had more modified adjusted equalized assessment wealth than the public jurisdictions that did contain separate jurisdictions. This is opposite to the situation in both 1973 and 1983 when the advantage to the public jurisdictions increased giving evidence that the public jurisdictions containing no separate jurisdictions were less assessment wealthy than those that did contain separate jurisdictions. Coincidentally, the dramatic shift in assessment wealth from urban centres to rural jurisdictions had, on average, a more positive impact on public rural jurisdictions not containing separate jurisdictions than on those that did.

Summary

The Minister's Task Force on School Finance in 1982 recommended that the proportion of school jurisdiction funding provided by the provincial government be increased to 85 percent. The additional funds required would come from general revenues, the largest component of which comes from provincial income tax. This would serve to both stem the growing reliance on the local property tax base and place more reliance on taxation based on personal income (Schmidt, 1988: p. 138). Instead, the proportion of school funding coming from the property tax base increased from 30.0 percent in 1983 to 36.8 percent in 1992-93 despite the best efforts of SREG and the other fiscal equalization grants introduced in the 1970's and the Equity Grant that replaced them in 1985.

Darby concluded in 1993 that the Equity Grant "only functioned as a way to maintain the status quo and was not a solution to the equity problem" (p. 123). In reality, as detailed in this chapter, the disadvantage of separate jurisdictions compared to public jurisdictions did become significantly worse in the rural areas while improving in the urban centres.

Schmidt had appeared to identify in 1988 the reason for the Equity Grant's failure. He concluded that under the Equity Grant in its save-harmless form "less wealthy jurisdictions did not substantially improve in relation to other jurisdictions" (p. 139). However, Schmidt noted that the potential fiscal equalization effects of the actual Equity Grant formula, known as Equity Potential, would have represented a major improvement. By 1992-93, the save-harmless provisions for wealthier jurisdictions had been totally phased in but the many jurisdictions in need had their Equity Grant capped at 50 percent of Equity Potential.

> To the less affluent school jurisdictions it appeared that regular government grants allocated to every jurisdiction including the affluent were filled in full. The Equity Grant, however, appeared to use what money was left, and if there was insufficient money for education, it would be the Equity Grant to less affluent jurisdictions that was cut (Darby, 1993: p. 122).

The provincial government was never successful in appropriating enough money to fully fund the demands of Equity Potential. Once again, equalization reforms were constrained by inadequacies of provincial funding allocations. To create an equity formula that had the potential to bring less affluent boards close to the average revenue yield and then not fully fund its own formula was a major strategic error on the part of the provincial government. To continue to dangle the carrot of Equity Potential just out of reach of the less fortunate among school jurisdictions was cruel sport indeed.

Darby noted that in 1992, the province had an estimated deficit of over $2.2 billion on revenues of $10.98 billion. He concluded that it was "unlikely that any significant new funds will be allocated to education by a provincial government with major budget problems. Financial problems have limited the government's ability to resolve the equity problem" (p. 5). The province was in need of a solution to the fiscal inequities of education finance within the resources already available.

The Constitutional Question

Chapter One provided the constitutional background for the establishment of separate schools and separate school districts in the Province of Alberta. Section 93 of the *Constitution Act* (1867) gave the legislature of each province exclusive responsibility to make laws in relation to education subject to certain provisions, the first of which is:

> (1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:

This essentially ensured that any separate school rights existing in a province at the time of its union with the Confederation of Canada were protected. Section 11 of the *North-West Territories Act* (1875) provided that the Protestant or Roman Catholic minority of the ratepayers in any school district may establish separate schools. At the time Alberta became a province, section 41 of the *School Ordinance*, Chapter 29, North-West Territories (1901) carried forward the same provision. Section 45 added the following to our understanding:

> 45. After the establishment of a separate school district under the provisions of this Ordinance such separate school district and the board thereof shall possess and exercise all rights, powers, privileges and be subject to the same liabilities and method of government as is herein provided in respect of public school districts.

Section 45 appears to reflect an expectation of equality between public and separate school jurisdictions. In particular, they possess the same rights and privileges and are subject to the same liabilities and method of government.

Section 17 of the *Alberta Act* (1905) affirmed the applicability of section 93 of the *Constitution Act* (1867) to the Province of Alberta with reference to the provision for separate schools in Chapter 29 of the Ordinances of the North-West Territories passed in 1901. Subsection 2 of section 17 adds the following understanding:

> 2. In the appropriation by the Legislature or distribution by the government of the Province of any money for the support of schools organized and carried on in accordance with the said chapter 29, or any Act passed in amendment thereof or in substitution thereof, there shall be no discrimination against schools of any class described in the said chapter 29.

This section elaborates on the equality between public and separate jurisdictions by clearly stating that, in the appropriation of any money by the Legislature or in the distribution of any money by the provincial government, there can be no discrimination between public and separate jurisdictions.

There were continuing significant fiscal inequities in the available resources between public jurisdictions and separate jurisdictions from the 1960s through 1993. Those inequities in available resources consistently translated, on average, into inequities in investment in the classroom. The provincial government repeatedly recognized this reality and the necessity to change it in various commission and committee reports on school finance. The provincial government repeatedly made efforts to address this situation, first with SREG and the other fiscal equalization grants, then with legislative amendments to the *School Act* in 1979 and 1980, and then with the Equity Grant. These efforts remained unsuccessful.

The question must be asked. Did the *Constitution Act* (1867), the *School Ordinance* (1901), and section 17(2) of the *Alberta Act* (1905), in particular, require the Province of Alberta to treat separate school jurisdictions equitably with public jurisdictions in terms of access to all fiscal resources, including the local assessment base? Or was the province's constitutional obligation confined to provincial grants distributed by the government. As early as 1915 in the *Gratton Case*, Chief Justice Fitzpatrick of the Supreme Court spoke about the equitable sharing of the taxes levied upon public companies being in the "spirit and letter" of section 17(2) of the *Alberta Act* (Chapter Two, page 57). This issue will be addressed in the *Ontario Home Builders' Case, PSBAA Case* and the *Bill 160 Case* in Chapter 10.

PART III

RESTRUCTURING THE GOVERNANCE AND FINANCE OF SCHOOLS

A Review of the Significance of the Changes of the 1990s
To the Governance and Finance of Separate Schools in Alberta

CHAPTER NINE

REGIONALIZATION, FULL PROVINCIAL FUNDING, *and* CONSTITUTIONAL CHANGE

Introduction

By 1993, the Alberta model for local governance of education contained 181 different school jurisdictions, the highest number per capita of any Canadian province. Of those, 40 operated no schools. Of the 141 boards that did operate at least one school, 65 had fewer than 1,000 students and 41 of those had fewer than 500 students.

In addition to giving the appearance of being over-governed, Alberta's system of school boards was convoluted and difficult to explain. For perhaps the most bizarre example, in the north of East Smoky *School Division* were two *separate districts*, lying side by side, Aubindale *Roman Catholic* and Smithreade *Protestant*. Neither operated a school but both directed their resident students to a Catholic majority *public district*, Falher *Consolidated School District*, which was surrounded by High Prairie *School Division*, with which it offered competing programs.

Alberta's education governance system appeared to have been designed by the dreaded stereotypical *government committee*, but it wasn't. It was created by a long-standing government strategy of evolution by default; it just happened.

Funding of Alberta School Jurisdictions

Prior to 1994, funding of Alberta's local school jurisdictions came from two primary sources, the provincial government and a local property tax requisition from the municipalities. This worked well enough for many decades. However, as detailed in Part II, the impact of the local property assessment gradually took on an increased significance with the development of Alberta's resource industries.

Developments such as oil and natural gas wells and pipelines, mega-projects such as refineries, tar sands, pulp mills, and the power plants and lines to keep them all running, created tremendous growth in property assessment values. Such assessment was not shared between local governments. Like any other property improvement, these developments became part of the assessed value of the property on which they were constructed. The result was that some local governments became very wealthy while others did not.

There's a peculiar thing about refineries and pulp mills. These are seldom constructed in densely populated areas. They are usually placed in *moose or antelope pastures*. Thus, the disparities in assessment wealth of school jurisdictions were often intensified on the basis of assessment per student. Appendix D-1 provides a poignant sampling of comparisons for 1993, the last year school boards had unfettered access to the municipal requisition.

- The adjusted equalized assessment per resident student ranged from $3,176,795 for Berry Creek School Division to $48,822 for Stirling School District with a provincial average of $190,799.
- The net mill rate ranged from 3.30 for Banff School District to 17.46 for Devon School District with a provincial average of 11.75.
- The supplementary requisition per resident student ranged from $13,405 for Berry Creek School Division to $643 for Stirling School District with a provincial average of $2,242.
- Valleyview Roman Catholic Separate School District placed a mill rate of 8.45 on an assessment per student of $79,605 to produce its meager $673 per student, while East Smoky School Division, the public jurisdiction with which Valleyview Separate competed for students, placed a mill rate of 5.93 on an assessment per student of $568,504 and generated $3,371 per student.
- The County of Paintearth, with a mill rate of 8.09 placed on $465,754 of assessment per student, produced $3,768 per student while the County of Barrhead placed 14.79 mills on $97,206 of assessment and generated $1,438 per student.
- Cypress School Division produced $5,109 per student with a mill rate of 4.77 on an assessment of $1,070,762 per student while Cardston School Division placed a rate of 12.08 on an assessment of $81,451 and generated $984 per student.

As discussed in Part II, there was a direct relationship between expenditures per student and assessment per student. The disparities in assessment wealth had produced two significant issues that became increasingly difficult for the provincial government to justify: inequity of education resources and inequity of property tax burden.

The majority of separate districts grew up around smaller urban centres in rural Alberta. Due to the *moose and antelope* phenomenon previously noted, most of these separate districts had a significantly lower assessment base than the surrounding school division or county with which they competed for students. Existing separate districts were enlarged by establishing adjacent separate districts and then amalgamating. Such separate districts were forced to expand to remain economically viable. Therefore, the issue of inequitable access to resources for students was often divided along religious lines. Rural separate districts had inherited a right to fewer resources and frequently paid higher taxes for the privilege.

It was widely rumoured that those pesky property owners would occasionally declare their assessment in support of the public or separate jurisdiction based on which one had the lowest mill rate, legislation to the contrary. It is also remotely possible that these inequities were used by the Alberta Teachers' Association negotiators to drive education's largest single cost by achieving early settlements with boards that could afford to be reasonably generous and using those beachheads to whipsaw less affluent boards. For the four years, 1990 through 1993, the total supplementary requisition for the Province of Alberta increased an average of 10 percent a year while the price index was a fraction of that amount.

The government could no longer ignore the inequitable access to education resources and inequitable tax burdens. In 1988, Schmidt observed that if the trend to an increasing proportion of local property tax funding continued, at least two serious results might emerge. First, there was the potential for a property taxpayer revolt. Second, there was the possibility of a divergence in program offerings among school jurisdictions.

> As the proportion of local school funding approaches and exceeds 50 percent, especially with the larger jurisdictions, it is likely that school boards will be increasingly reluctant to follow the dictates of Alberta Education. This situation may result in a lack of uniformity in program offerings and an even wider variation in student educational opportunity than already exists across the province (p. 136).

Ratepayers and municipalities increased their call for cost control of the rising rate of requisitions. Many rural separate districts and some public ones were in financial crisis. In the Spring of 1992, the Deputy Minister of Education "expressed concern that the financial situation of several school jurisdictions was so poor that they might no longer be able to function" (Darby, 1993: p. 39). Darby found that the school jurisdictions with low per student expenditures tended to be rural, Roman Catholic Separate Districts "with less than 1000 students, varied levels of net mill rates, and low per pupil equalized assessments" (p. 112). Darby completed a case study of three school jurisdictions and determined that "the jurisdiction with the highest expenditure per pupil had higher scores on the provincial achievement test in 10 out of the 12 tests examined between 1987 and 1990 (p. 113). A belief evolved that there needed to be larger, more efficient school jurisdictions, particularly in rural Alberta, and an equalizing of available resources and, hence, educational opportunity.

Regionalization

In June 1992, the *School Amendment Act* (1992), Bill 41 was tabled in the Alberta Legislature. It provided that the Minister may establish a regional division consisting of two or more districts, divisions or counties, but only if:

- each board, or county council in the case of a county, by by-law approves the establishment of the regional division and the inclusion of its area in the regional division, and
- all of the boards have entered into a regional agreement approved by the Minister.

The Minister would appoint the first trustees and establish a ward system in accordance with the regional agreement. Each member jurisdiction would be a ward of the regional division. Wards could be further divided into electoral subdivisions. As was done with the original county legislation, not less than four years after the establishment of a regional division, the electors of a ward could petition the Minister for a plebiscite to withdraw the ward from the regional division. Such a plebiscite must be held concurrently with the local general election. Bill 41 stated that, if the plebiscite passed, the Minister *may* re-establish the area as a district, division, or county.

Bill 41 also addressed Alberta's obligations under section 23 of the *Charter of Rights and Freedoms* for minority language educational rights. The Bill provided that the Minister may establish any portion of Alberta as a *francophone education region*. The minister may establish a *regional authority* for a region that would have all the powers of a school board except the power to requisition. A regional authority would operate at least one distinct francophone school.

Many boards expressed concerns about the regional division provisions of Bill 41. Even though it was a voluntary scheme, boards saw it as the *thin edge of the wedge*. Bill

41 died on the Order Paper. It was generally believed this had been because of opposition to regional divisions, but in reality, the majority of government MLA's were not ready for francophone governance.

A New Leader

The regional division and francophone governance provisions were returned to the legislature in April 1993 as Bill 8, the *School Amendment Act* (1993). Ralph Klein had been elected leader of the Conservative Party in December 1992 and was now Premier. He made a commitment to implement francophone governance and dissident MLA's grumbled quietly. The Alberta Association of Municipal Districts and Counties had demanded, on behalf of the counties, changes to the provision for regional divisions from that introduced in Bill 41. The fact that the provision was voluntary offered the Association no comfort. The rural municipalities had delivered the rural vote to Mr. Klein enabling him to win the party leadership on the critical second ballot and hinted that the same vote might not be there in the approaching provincial election.

The lobby was effective. Bill 8 provided that a county council may, at council's discretion, appoint the county's trustees to the regional division board from the county councilors. This maintained the spirit of the County Act under which county council appointed its members to the County Board of Education. Now after a successful plebiscite, the Minister *shall* re-establish a ward as a district, division, or county. The *School Amendment Act* (1993) was proclaimed in June 1993, with the exception of the francophone governance sections, which were proclaimed in January 1994.

On August 31, 1993, the Minister of Education imposed amalgamation on 35 of Alberta's 40 school boards that did not operate schools, including 8 public and 27 Roman Catholic separate districts. All were amalgamated with the jurisdiction serving their students, public with public and Catholic separate with Catholic separate. This was intended to demonstrate that the government was serious about reducing the number of school boards and inspire boards to look with affectionate glances at their neighbors. Of the 5 non-operating boards left dangling, 4 were *separate* districts formed for the sole purpose of sending their students to a nearby *public* jurisdiction. Both Aubindale Catholic and Smithreade Protestant directed their students to attend the public school in

Fahler, Livingston Protestant sent its students to the public schools in Drumheller, and Aqueduct Catholic directed its students to the public schools in Brooks. The provincial government was not in a position to legally impose an amalgamation of a minority separate district with a majority public jurisdiction even if the public jurisdiction was the separate district's chosen serving jurisdiction. The fifth jurisdiction was St. Isidore School District, a francophone-Catholic majority public district that directed its students to the Catholic separate district in Peace River, which offered a French language program.

The only boards who offered any complaint about the abrupt fate of the 35 "non-op's" were those boards themselves. *Amalgamation* involves dissolving one jurisdiction and adding its lands to another. It was not like *regionalization* where the effected jurisdictions would become electoral wards of the new regional division with the faint hope that they might someday be able to vote themselves back into existence. An amalgamated jurisdiction ceased to exist.

Ralph Klein's government was elected in June 1993 with a mandate for change. Premier Klein promised to balance the provincial budget, implement a plan to retire the provincial debt, and make the necessary changes to achieve those objectives. In their respective addresses on January 17 and 18, 1994, the Premier and Minister of Education, Halvar Jonson, made it clear that the province's education system would not be exempt from this process. The government *News Release* dated January 18, 1994 confirmed a range of initiatives for the restructuring of education as had been announced by the Premier and Minister. Two of these would significantly alter the structure of educational governance in the Province of Alberta. Legislation would shortly be placed before the legislature enabling the province to assume full responsibility for the property tax base for education and implement *full provincial funding* of education effective January 1, 1994. All property taxes would be pooled by the province and redistributed on the basis of equal dollars per student. A target was set to reduce the number of school boards in the province to about 60. School boards were given until August 31, 1994, to form regional divisions voluntarily after which regionalization would be imposed on them by the province (Alberta Education, 1994c).

School boards were less than thrilled. Many were shocked that they would lose their precious access to the property tax base, supported by such a long tradition, especially those boards that had enjoyed an above average assessment per student. Others were encouraged that they might finally be about to get a more equitable share of the pie. Many rural boards did not favour *shot gun marriages* with the neighbors of their choice but were less enthused about imposed unions with partners of the government's choosing. Boards that served larger numbers of students and knew they would not be effected by regionalization thought it was about time the system stopped spending scarce education dollars on needless excess administration.

On February 24, 1994, the Minister of Education released a three-year business plan for education entitled *Meeting the Challenge*. It announced a 12.4% reduction in provincial education spending over the 4-year period from 1993-94 to 1996-97 (Alberta Education, 1994e). This represented the smallest planned departmental spending reduction in government in the effort to balance the provincial budget. The objectives were quite simply to minimize governance and administration overhead, facilitate economies of scale in such areas as instruction support, maintenance and student transportation, maximize available resources for the classroom and minimize the impact of overall spending reductions on students.

The message to be communicated was summarized in a government *News Release* on February 18, 1994. The Minister discussed the principles, process and timelines guiding the regionalization and amalgamation of school jurisdictions at a consultation meeting held with education interest groups and municipal government and business representatives. The Minister stated:

> In proceeding to reduce the number of school boards we must ensure that the future regional structures reflect the needs of local communities and students, and the need to reduce our administrative overhead. Regionalization or amalgamation of school jurisdictions must therefore be consistent with our guiding principles and result in a more efficient and effective education system (Alberta Education, 1994d).

The guiding principles for regionalization were given as:

- The objective is to create larger, more efficient jurisdictions, which maintain and improve educational opportunities for students.

- The members of new jurisdictions should share a geographic area and/or a trading area.
- Jurisdictions shall share common characteristics and an understanding of conditions in member jurisdictions. These characteristics could include such factors as sparsity of population, small schools, distance of transportation for students.
- Jurisdictions should share a road or highway network to make travel across the enlarged jurisdiction comparatively convenient.

Affirmative Action

The *School Amendment Act* (1994), Bill 19, was proclaimed in May 1994. It empowered the Lieutenant Governor in Council to establish regional divisions. Only wards of voluntary regionalizations could petition after four years for a plebiscite to withdraw and re-establish the area as a board. Voluntary regionalization and amalgamation agreements among boards reduced the number of remaining boards by over half from 146 to 71 by August 31, 1994. This was a phenomenally successful voluntary response. The agreement for one Catholic regional division, Evergreen, took effect on June 10, 1994. All other voluntary agreements took effect either September 1, 1994, or January 1, 1995.

On October 3, 1994, the Minister imposed amalgamation on Camrose Roman Catholic Separate District by adding its lands to Sherwood Park Catholic Separate. Camrose had gotten itself into dire financial straits in the late 1980's. The provincial government had bailed the district out with an injection of cash and the assumption of some of its debt. During the 1992-93 and 1993-94 school years, Camrose returned to its former position of serious deficit financing. It had been rejected by all potential suitors for voluntary regionalization. This amalgamation would eventually take on an unexpected significance.

On October 13, 1994, the Minister announced additional regionalizations to be imposed by government, which would reduce the number of school boards to 57 (41 public boards and 16 separate—one Protestant and 15 Roman Catholic). This count excluded 3 francophone authorities established September 1, 1994. Regionalizations imposed by the Lieutenant Governor in Council took effect January 1, 1995, with the sole exception of Jasper School District that had its effective date delayed to September 1, 1995. The Minister stated:

> The amalgamation and regionalization of school boards is a necessary step in the overall enhancement of education in Alberta. Each decision is based on what is best for students and the education system as a whole...We must ensure that increased efficiencies are used to benefit students. We must make certain that as many education resources as possible directly support student learning (Alberta Education, 1994g).

Only one county, the County of Parkland, had been spared from regionalization and it voluntarily reverted to a municipal district and a school division. The provincial government repealed the *County Act* in 1995 but allowed those municipalities to retain the name *county*. Appendix D-2 presents a detailed listing of the voluntary and involuntary regionalizations as well as those jurisdictions not effected by the process.

The four non-operating separate districts, Aqueduct and Aubindale Roman Catholic and Livingston and Smithreade Protestant, that were directing their students to public schools and who had escaped imposed amalgamation in August 1993 had been convinced to pass resolutions requesting the Minister to dissolve them effective August 31, 1994. They were made aware of Justice O'Leary's recent decision in January 1994 in the *Jacobi Case* that separate districts that provide a public school education have no legal status. Also, under Bill 19 proclaimed May 1994, the original necessity for forming these separate districts, to access public schools in a neighboring jurisdiction that the home public jurisdiction would not support with tuition, no longer existed. Full provincial funding dollars would follow the student to the parent's school of choice. St. Isidore School District was added to Peace River School Division effective January 1, 1995, after one of the three new Francophone authorities began offering French language programming to the entire Peace River region.

Litigation and Negotiation

On December 12, 1994, the Alberta Catholic School Trustees' Association (ACSTA) and a number of separate boards commenced legal action in Court of Queen's Bench challenging the forced regionalizations of Roman Catholic separate districts and the amalgamation of Camrose. The plaintiffs successfully obtained an injunction preventing the five Orders-in-Council (O/C's) involved from being effective. The injunction did not include the Ministerial Order amalgamating Camrose; that amalgamation remained in effect. The injunction increased the number of separate jurisdictions in Alberta from the intended 16 to 22.

The plaintiffs alleged that the province had violated denominational rights under section 17(1) of the *Alberta Act* (1905) and particularly those based on section 48 of the *School Ordinance* (1901). Section 48 provided that the Commissioner of Education had the authority to alter school district boundaries if it could be shown that the changes met two tests: (1) the changes do not prejudice the rights of ratepayers under section 14 of the *North-West Territorities Act* (the right to establish separate districts by the Protestant or Roman Catholic minority) and (2) the changes are for the general advantage of those concerned.

In actuality, the ACSTA did not appear opposed to regionalization or amalgamation, only the ability of the province to impose it on separate boards without their consent. While the Statement of Claim and Statement of Defence were filed, the legal action never came to court. Rather than pursue the action, the ACSTA launched into intense negotiations with the separate boards involved to find acceptable *voluntary* regionalizations. The Alberta provincial government also preferred the negotiation option to protracted litigation.

During 1996 and 1997, the ACSTA successfully negotiated 4 voluntary regionalization agreements, approved by the Minister, which replaced 3 of the 5 O/C's encumbered by the injunction. This resulted in the number of separate jurisdictions being reduced from 22 to 18, 2 shy of the Minister's stated target of 16. One of these agreements, Slave Lake into Holy Trinity (Whitecourt, Westlock) was effective January 15, 1997. The other 3 were effective September 1, 1997.

ACSTA negotiation with Evergreen (Spruce Grove, Stony Plain) and Sundance (Edson, Hinton) had proven unsuccessful; those two appeared to be holding out until an agreement had been accepted for Fort Saskatchewan and Sherwood Park. In November 1997, Fort Saskatchewan and Sherwood Park submitted an agreement to the Minister for approval. The agreement was contingent on the amalgamation Order for Camrose being repealed and Camrose being included as a *ward* in the new regional division along with Fort Saskatchewan and Sherwood Park. The Minister stated he was not prepared to approve the agreement on that basis. Camrose appeared to have become the critical link.

Why was Camrose so important to Fort Saskatchewan and Sherwood Park? Even if the remaining 2 O/C's under injunction were resolved, if the Camrose amalgamation was left unchallenged, the province would have demonstrated precedent that it can alter the boundaries of a separate jurisdiction, that operates at least one school, without its consent. Camrose, as a ward, would have access to the plebiscite after 4 years, the same as any other ward of a voluntary regional division.

Why would the government be unwilling to accept the Fort Saskatchewan-Sherwood Park agreement? The prospect of Camrose one-day voting itself back into existence may not have been appealing considering the district's past repetitive financial irresponsibility. But how likely was that? Besides, the sins of Camrose Separate were no worse that the financial tribulations of Slave Lake Separate, and Slave Lake had become a ward of a voluntary regionalization. Perhaps there was some interest on the part of government in maintaining at least that one precedent.

On December 3, 1997, the minister met with the Chairs of Fort Saskatchewan and Sherwood Park in a last attempt to resolve this matter. The discussion was not successful. The Minister later advised the President of ACSTA that the government was proceeding with the court action. On January 9, 1998, the ACSTA withdrew from the litigation against the province after two years of valiant efforts to negotiate resolution. In late January, Fort Saskatchewan and Sherwood Park submitted an agreement that did not include the Camrose condition. On January 28, the Minister approved the agreement creating the Elk Island Catholic Regional Division effective February 1, 1998.

In early February 1998, Evergreen, Holy Trinity, and Sundance entered into two agreements. The Whitecourt and Slave Lake wards of Holy Trinity would combine with Sundance (Hinton, Edson) to form Living Waters, while the Westlock ward of Holy Trinity combined with Evergreen (Spruce Grove, Stony Plain). On February 11, the Minister approved the agreements to take effect April 1, 1998. The last page of Appendix D-2 details all regionalizations effective in 1997 and 1998 as a consequence of negotiation.

These latter day agreements resulted in the number of separate jurisdictions being reduced from 18 to 16, the government's stated target. After over three years, all five O/C's encumbered by the injunction had been replaced by voluntary agreements. The outstanding litigation was resolved, with the poignant exception of Camrose. The February 4, 1998 edition of the Sherwood Park News quoted the Chair of the new Elk Island Catholic Regional Division when it reported that the new board agreed it should continue to seek reinstatement of the Camrose ward. "We question whether or not the minister, through a strike of his pen, really has the right to dissolve a (separate) district" ("No surprises," 1998).

In February 1998, the *School Amendment Act* (1998), Bill 3, was tabled in the legislature. It provided a process for holding a plebiscite for electors to withdraw a ward from a voluntary regional division. Such a plebiscite can only be held at the time of the local general elections. However, the ward can now only be withdrawn based on a successful agreement to become part of another regional division. Wards of voluntary regional divisions will not be able to once again be a stand-alone board, thereby increasing the number of Alberta school boards. No realist with a brain ever expected that wards of regional divisions would be permitted to revert back to their original form, but it was nice to have it confirmed.

Bill 3 was proclaimed in March 1998. With the removal of the ability of a ward of a voluntary regional division to withdraw and become a stand-alone board again, the only incentive for pursuing the litigation for Camrose alone would be the issue of precedence. Without ACSTA's support for the litigation, that was not likely to occur. All parties opted to let that *sleeping dog* rest undisturbed until 2005 when the provincial government made application to the Court of Queen's Bench to dismiss the action. The ACSTA had ceased being a party to the action in January 1998 and choose not to oppose the government's application on behalf of the former Camrose Separate District. On July 25, 2005, the Court granted a Consent Order dismissing the action over a decade after the initial Statement of Claim was filed in December 1994. The action was dismissed under a rule of court that provides that if nothing has happened in an action for five or more years to materially advance it, then the Court shall dismiss the action.

After Bill 3 was proclaimed in March 1998, there were no instances where the electors of the ward of a regional division petitioned for a plebiscite to withdraw the ward from a regional division and become part of a different regional division in either the 1998 or 2001 local general elections. However, on February 12, 2001, Edmonton Roman

Catholic Regional Division signaled its intention to once again have coterminous boundaries with Edmonton Public District, effectively cutting the cord with Vegreville Separate District, its regionalization partner for the previous four years. A day later on February 13, the Elk Island Roman Catholic Regional Division (which surrounds the Vegreville Separate District) held a special meeting to state they were open to welcoming Vegreville into their regional division (Crush, 2001). On May 8, 2001, with a stroke of the Minister's pen, the Vegreville Separate District went from being a ward of Edmonton Roman Catholic Regional Division to being a ward of Elk Island Roman Catholic Regional Division. While the electors of the Vegreville Separate District had not initiated this action as envisioned in Bill 3, it was thus far Alberta's only example of a ward of a regional division changing marriage partners.

The year 2004 saw the electors of the Hinton Ward of Living Waters Catholic Regional Division successfully petition Living Waters for a plebiscite to withdraw from the region. The plebiscite was conducted with the local election on October 18, 2004, and the Hinton Ward electors voted by a narrow 52 percent in favour of withdrawing from Living Waters. At the same time, the electors chose three representatives who were elected to negotiate an agreement with another existing Catholic district or regional division as required by section 229 of the *School Act* (2000). An agreement was signed April 11, 2005, with Evergreen Catholic Regional Division (Stony Plain, Spruce Grove, Westlock) and submitted to the Minister of Education before the April 30 deadline imposed by section 234 of the *Act*. On July 30, 2005, the Minister signed the Order adding the Hinton Ward to Evergreen Catholic Regional Division on the effective date of September 1, 2005, as stipulated in section 232(2).

The process of extricating the Hinton Ward from Living Waters was difficult on the community and is not an option to be undertaken lightly by any eligible ward of a regional division. Among the guiding principles of regionalization provided by the provincial government in February 1994 were that member jurisdictions should share a geographic area or trading area and a road or highway network to make travel comparatively convenient. One must now travel across the Edson Ward of Living Waters to get between Hinton and the other wards of Evergreen. But the *School Act* clearly provides for the option of a ward realigning with a different regional division, and with the widely scattered rural separate wards of Catholic regional divisions, being part of the *nearest* Catholic regional division will not always be possible in such a realignment. It is noted that among the five impugned Orders-in-Council set aside by injunction in December 1994 was one combining Sundance (Hinton, Edson) with an earlier version of Evergreen consisting of only the Stony Plain and Spruce Grove Wards. It is interesting that a decade later, the Hinton Ward would put itself through the difficult process of the plebiscite only to realign with the same communities it found objectionable on principle in 1994.

Full Provincial Funding

The new *School Act*, Bill 59, introduced by the Government of Alberta during the 1987 Spring Session of the Legislature, destined to become the *School Act* (1988), was presented as founded on five principles: access to quality education, equity, flexibility, responsiveness, and accountability. Alberta Education distributed a discussion paper dated October 13, 1987 that presented five alternatives for addressing the issue of equity in school finance. Option 1 was essentially the status quo, to maintain the Equity Grant at its then current state of 50 percent of full implementation under the save-harmless provisions. Option 2 would see the Equity Grant fully implemented without the save-harmless provisions, which would require the province to find significant amounts of additional funding. Option 3 would also see the Equity Grant fully implemented but the additional funds required for those jurisdictions with below average assessment would come from balancing off a negative equity grant calculation for jurisdictions with above average assessment (where a negative fiscal capacity calculation exceeded the sparsity and distance calculations) against other provincial grants. Option 4 involved the provincial pooling and equitable redistribution of non-residential property tax leaving the school jurisdictions to requisition only the residential and farmland assessment. Option 5 would see only one-half of the non-residential assessment pooled and redistributed on an equitable basis (Alberta Education, 1987).

The option that received the widest support from school boards was Option 2, which the government could not afford in its then current deficit plight. The government didn't really like the concept of *negative equity* under Option 3, also referred to as *power* *equalization*, since some boards would receive significantly less revenue from the province and some might receive little at all. As noted above in the reference from Schmidt, as the province provides a declining portion of the school funding, it becomes increasingly difficult for the province to impose its dictates on school boards. The alternative that appeared to be most supported by the presentation of the advantages and disadvantages of each option in the Alberta Education discussion paper was Option 4 known as *corporate pooling*. Less wealthy school jurisdictions would certainly benefit from this option but it was vigorously opposed by school jurisdictions with an above average assessment base. Option 5 was similarly a non-starter. As a result, the government caucus was split right down the middle on the alternative of corporate tax pooling between those who represented the *have* school boards and those who represented the *have-nots*.

A Time for Change

In 1989, a landmark court case, *Council for Better Education vs. Rose*, was determined in the State of Kentucky. The plaintiffs, member school boards of the *Council*, brought the suit on equity grounds alleging that Kentucky's education finance system violated its constitutional requirement to provide adequate funding for elementary and secondary education. The state Supreme Court went even further and invalidated the entire state system of education, finding it inadequate and incapable of providing students with an opportunity to reach high education standards. The result was the 1990 Kentucky Education Reform Act (Tortora, 1998; Smith, 2004). This Kentucky court case represented the first time that the equity of a state education funding system partially based on local property taxes had been successfully challenged. The dramatic outcome attracted attention across North America. Provincial officials in Alberta were concerned that the same thing that happened in Kentucky could happen in Alberta. It is worthy of note that by December 2004, among similar cases in 43 American states where the outcome had been determined, plaintiffs had been successful in 25 (Hunter, 2004).

Twenty-nine Alberta school boards, 18 public jurisdictions and 11 Roman Catholic separate districts, who called themselves *the 407 Club* (representing the $4.07 per resident student contribution paid by each board to fund the lawsuit), issued a

Statement of Claim against the Province of Alberta in March 1992. The plaintiffs alleged that the Alberta school-funding scheme was unconstitutional on the grounds that it was contrary to section 15 of the *Charter of Rights and Freedoms*. The school boards argued that the right to equality under section 15 was violated by virtue of the denial of their students' right to equal educational opportunity and their residential taxpayers' obligation to bear a disproportionate share of the education tax burden. As a consequence, the school boards argued that they were at or near the limit of their abilities to raise revenue from property taxes and that their ability to provide educational programs, as is their statutory duty, was impaired.

The province never argued that the funding scheme was fair, neither did the province dispute the limitations that the inequities placed on these school boards. The province simply argued that school boards were not students or taxpayers and did not have standing to bring the action to challenge the legislation. Secondly, the province argued that the school boards were corporations and as such were not protected by section 15 of the *Charter*. Further, the grounds argued by the school boards of geographic residence and wealth of the tax base were not grounds relating to the personal characteristics listed in section 15 of the *Charter*. In his February 1993 decision, Justice McMahon found that the school boards had no standing because they had not shown a valid legal basis for challenging the Alberta funding scheme, legislation and regulations. The school boards relied solely on section 15 of the *Charter*, which did not apply to them as corporations and did not cover the grounds of discrimination alleged of geographic residence and tax base.

Alberta's provincial leaders were reluctant to wait for the *have-not* school boards to bring forward a stronger case. For example, a better argument might have been based on the constitutional requirement in section 17(2) of the *Alberta Act* (1905) for no discrimination in the appropriation of any moneys by the province, or in any Act passed in support of any class of schools organized in accordance with Chapter 29, the *School Ordinance* (1901). Where the government caucus had been divided on the proposal to provincially pool just the corporate tax base, they were inspired to reach consensus by late 1993 on the face-saving approach of pooling the entire property tax base for education, leading to the dramatic government announcements in January 1994.

Bill 19 and the new Funding Framework

The initial draft of the *School Amendment Act* (1994), Bill 19, provided that *all* Alberta school boards would participate in the *Alberta School Foundation Fund* (ASFF), which would replace the School Foundation Program Fund (SFPF) that had been introduced in 1961. All property taxes collected by municipalities for school purposes would be paid into the ASFF and then redistributed to school jurisdictions on the basis of equal dollars per Alberta student served. Local school jurisdictions would no longer directly tax their supporters with one exception. A school jurisdiction would have the opportunity to seek the approval of their supporters by plebiscite once every three years during the local elections for a special school tax levy of up to three percent of the jurisdiction's budget for the subsequent one to three years.

The provincial government became fearful that the Alberta Catholic School Trustees' Association would challenge the forced participation of separate jurisdictions in the ASFF on the basis that it violated the protected right under section 41 of the *School Ordinance* (1901) to establish a separate school and "be liable only to assessments of such rates as they impose upon themselves in respect thereof." Of course, a court might find that the new system of full provincial funding puts the separate jurisdictions at no disadvantage with their public counterparts and therefore is not an infringement of the constitutional rights. Historically, the majority of separate jurisdictions had been at a distinct disadvantage under the previous system of relying on the local assessment base plus an inadequate system of provincial equity grants.

The provincial government decided to play it safe and avoid the possibility of litigation. The *School Amendment Act* (1994) as proclaimed in May 1994 provided that a separate district, or a regional division comprised entirely of separate districts, could opt out of the ASFF and continue to requisition directly from the municipalities within the boundaries of the separate authority. Opted out separate jurisdictions must levy an equalized mill rate which is not less than the mill rate set by the province. If a separate jurisdiction levy yields less per student than the average for the education taxes, the province will top up the difference from the ASFF. Should a separate authority ever collect more than the average, the excess is to be paid into the ASFF.

Separate jurisdictions were given 30 days following the proclamation of the *School Amendment Act* (1994) to pass a resolution to opt out of the ASFF. A similar 30 days is provided following the effective date of a regionalization comprised entirely of separate districts. A separate jurisdiction is given a further 30-day opportunity to change the status of its participation in ASFF following the local general election held every 3 years. After proclamation of the legislation, half of the separate districts opted out and half remained in the ASFF. Subsequent to the local election in October 1995 and the conclusion of the negotiated regionalizations of separate jurisdictions effective April 1998, there are no separate jurisdictions that have remained in ASFF.

Even though separate jurisdictions must levy a mill rate not less than the rate set by the province, there is no incentive to levy a rate that is one bit higher. To do so would exhibit an acute lack of mathematical skills. Regardless of how much is raised locally by the opted out board, legislation requires that it be equalized to the same amount per student the board would have received had it remained in the ASFF. In short, there is no financial advantage, or disadvantage, to a separate board that opts out of the ASFF. The motivation for separate jurisdictions to opt out of ASFF may well be a fear and distrust of the motives of the provincial government. A right partially not exercised is perhaps a right ultimately lost. Separate trustees believe that they must maintain a relationship with an identified list of supporters in order to protect their minority rights.

In September 1995, Alberta Education introduced its new *Framework for the Funding of School Authorities*. The new Funding Framework placed a restriction on the amount that boards could spend on board governance and system administration. Boards serving 6,000 or more students were limited to 4.0 percent of the amount spent on instruction, plant operations and maintenance, and student transportation. Boards serving 2,000 or less students were limited to 6.0 percent. Boards serving student numbers in between those two thresholds were limited to a sliding scale between 4.0 and 6.0 percent. These restrictions on expenditures for board governance and system administration were intended to minimize the impact on the classroom of the provincial education expenditure reduction announced in February 1994. A limit of 2.0 percent was also placed on the proportion of instruction funding a school board could transfer to expenditures for plant operations and maintenance or student transportation, to ensure that funding provided for instruction was spent on instruction.

The new Funding Framework placed a new emphasis on *school based decision making* and local school councils, where the schools made the decision to provide certain instructional support services rather than the school board or central office. Centrally determined system based instructional support was also restricted under the Funding Framework to 1.6 percent in 1995-96, 1.2 percent in 1996-97, and 0.8 in 1997-98. Beginning in 1998-99, the percentage was adjusted to 1.0 percent. No restriction was placed on school based decisions to provide school based instructional support.

As separate jurisdictions moved to opt out of the ASFF, the Alberta Catholic School Trustees' Association would espouse the position that these expenditure restrictions were not applicable to the locally raised portion of separate school jurisdiction funding. The province disagreed. Simple mathematics suggests that if the percentage restrictions are not applicable to a significant portion of the funding, they are not applicable to the whole of the funding.

Constitutions Are Not Written in Stone

There was more to the restructuring of minority religious education rights of the 1990s than just the creation of fewer school boards with larger areas to govern and the implementation of full provincial funding as experienced in Alberta. In some provinces, minority religious school boards ceased to exist. These events would create uncertainty in the Province of Alberta about the future of its separate schools.

On March 25, 1997, the Montreal Gazette reported that the Quebec government had the day before presented a formal request to Ottawa for a constitutional change to replace its system of confessional school boards with linguistic boards ("Quebec Maps Out," 1997). In *Reference re Education Act* (1993), the Supreme Court of Canada had found in favour of the Quebec government's Bill 107 to replace its Catholic and Protestant public schools with French and English linguistic boards while preserving the Catholic and Protestant confessional school boards in the Cities of Montreal and Quebec as well as the five existing dissentient school boards and the right of Catholics and Protestants to dissent outside of those two cities. Now the Quebec government sought to exempt the province from subsections (1) to (4) of section 93 of the *Constitution Act* (1867).

The Ottawa Citizen reported on June 20, 1997:

> It's full speed ahead with a constitutional amendment regarding Quebec school boards, Intergovernmental Affairs Minister Stephane Dion said yesterday. Yesterday's vote in the National Assembly re-established broad multi-partisan support for a new law to replace Quebec's Catholic and Protestant boards with French and English boards (Wells, 1997).

On November 27, 1997, the Montreal Gazette editorial reported that "commentators in Quebec's French-language newspapers welcomed the House of Commons' approval last week of a constitutional amendment permitting Quebec to replace confessional school boards with linguistic boards" ("Quebec: Linguistic," 1997). As of July 1, 1998, the over 250 Catholic and Protestant school boards of Quebec were regrouped into 60 French school boards and 9 English school boards (Bracken, 2005).

Unlike other Canadian provinces with constitutionally protected denominational guarantees only for Protestant or Roman Catholic religious minorities, Newfoundland had a unique system under the 1949 Terms of Union. Term 17 granted six denominations the right to operate their own publicly funded schools. In 1987, Term 17 was amended to extend denominational school rights to the Pentecostal Assemblies. These seven denominations operated four separate schools systems: the Integrated School System (Anglican, Presbyterian, Salvation Army and United Church), the Pentecostal School System, the Roman Catholic School System and the Seventh Day Adventist School System (Dion, 1997).

The Government of Newfoundland held a successful referendum on September 2, 1997 to secure a mandate to seek a constitutional amendment to Term 17 to create a single publicly funded and administered school system. An editorial in the Globe and Mail dated September 5, 1997 observed that opponents of the vote maintained that a majority vote should not be able to take away minority rights. "But constitutions are not written in stone; they were democratically created and can be altered the same way. It's just that the hurdle is higher" ("Minority rights," 1997). Catholic officials asked the Newfoundland Supreme Court to declare the referendum invalid, arguing that Ottawa could not approve the constitutional amendment necessary to change the school system without the consent of the minorities affected. The Edmonton Journal for September 23, 1997 reported that, in response, Premier Brian Tobin, "who is Catholic, said he is appalled that a group of Catholics would ignore such a strong majority at the ballot box" (MacAfee, 1997). This court case, *Hogan v. Newfoundland*, will be reviewed in the next chapter. On January 8, 1998, the Governor General of Canada proclaimed the requested amendment to Term 17.

In the 1997 spring session of the Alberta legislature, a private member's Bill was tabled to increase provincial instruction funding to private schools from about 50 percent to 75 percent of what the public system receives. The Bill died on the Order Paper, but did result in the appointment of a Task Force led by a Member of the Legislative Assembly to review funding to private schools. The Edmonton Journal for September 5, 1997 reported:

> In a decisive vote that crossed every religious boundary, Newfoundlanders agreed to build a single system of public education if Parliament agrees. From now on, parents who prefer a segregated system will have to pay for preferences at private schools. Far away in the West, Alberta is expanding the education system that Newfoundlanders voted to dismantle…The Klein Government has asked a committee to report on private school financing this fall. Alberta will have to try to balance the legal rights of Catholics, who have a guarantee of tax-supported separate schools in the Constitution Act and the Alberta Act, with the demands of other religious denominations for equal treatment. Expect a very difficult debate on minority rights and majority expectations (Goyette, 1997).

On October 27, 1997, the Alberta Report advised that Rabbi Alan Saks, a teacher at the Akiva Academy, a Jewish private school in Calgary, wanted the government to give his school more money. "Our main point was that Catholic schools receive full funding, but they're the only religion that does" (Steel, 1997).

On September 22, 1997, the Alberta Report offered the following perspective on the secularization of education with the worrisome title, *After Newfoundland Quebec, where next? Alberta's religious educators fear a westward spread of eastern intolerance.*

> Religious educators in Newfoundland and Quebec might once have scoffed if asked whether their religious school rights might one day be rescinded. In Alberta, where religious education is a constitutional right for both Catholic and Protestant schools, these "reform" movements are raising concerns. Gary Duthler, executive director of the Association of Independent Schools and

> Colleges in Alberta, says, "it would be foolish not to think that every province will soon face this sort of secularist pressure…Suppose we had a referendum in Alberta on whether Catholic schools should have certain privileges? Can you put that type of question to a majority where constitutional rights and privileges are supposed to protect minorities" (Di Sabatino, 1997)?

And finally, in the Alberta Report of November 24, 1997, the publisher gave this scathing indictment of the failure of Catholics to return the above noted support offered by the executive director of the provincial association of private schools with the inflammatory title, *Why did the Catholics sell out Alberta's Protestant schools*?

> If your religious position is Catholic or agnostic, the state will educate your children for free. However, if you happen to be Protestant, Sikh, Muslim or Jewish, the government will make you pay…If the task force recommends perpetuating the anti-Protestant prejudice in Alberta, the blame will not lie with the Protestants, who have defended their own cause as best anyone could. The blame, in my opinion, will lie with the Catholics…Had Catholic school authorities spoken forcefully for the justice of the Protestant case, and demanded equal funding of all children regardless of religion, the government would have a hard time contradicting them. But some Catholics attacked independent school funding of any amount, while others defended the discriminatory status quo. Well what goes around comes around…what just happened to Catholic schools in Newfoundland can happen in Alberta (Byfield, 1997).

These national events and resultant issues in Alberta created significant concern for Alberta's Catholics. The November 3, 1997 issue of Fort McMurray Today reported that the President of the Alberta Catholic School Trustees' Association was urging Catholics in Alberta to be more vigilant about their constitutional rights, which were threatened in other provinces. "They must be aware of the political atmosphere…and the fragility of Catholic education…This is the dismantling of the country piece by piece" ("Roman Catholics," 1997). The impetus for separate jurisdictions to opt out of the Alberta School Foundation Fund, to resist imposed changes to their boundaries, and to oppose any restrictions on expenditure of the local share of revenues was fear that such changes might amount to successive nails in the coffin of minority religious education rights. These fears were not diminished by events in other provinces or in Alberta.

On October 30, 1997, Minister of Education, Gary Mar, met with and assured the Alberta Catholic School Trustees' Association at their annual convention that Catholic education rights will continue to be respected and supported in Alberta. On March 5, 1998, the provincial government announced its approval of the recommendations of the Task Force on private school funding, including increasing the basic instruction funding from 50 percent to 60 percent of what public and separate schools receive effective September 1, 1998.

Conclusion

The reduction in the number of school boards from 146 to 60 in 1994, concurrent with the loss of school board access to the local tax base, the elimination of the county system of government, the move to school based decision making, and restrictions on the amount of expenditures on system administration and instruction support, made for a stimulating time. Add to that a reduction in funding for education and a roll-back of public sector salaries, all to help the Provincial Government destroy the dreaded deficit dragon, and we have a concentrated period in the history of Alberta's education system that is unrivaled in the extent and intensity of its change.

Through all of this, Alberta's classrooms remained viable, strong and effective. Few, if any, who work in Alberta's education profession or the public at large, would want to return to a time when we had many more boards and significantly higher cost of centralized services. Few if any would want to return to a system of funding education based on inequity of resources and inequity of property tax burden. While the changes announced in January 1994 were tough medicine, for the most part, they represented good medicine.

From the perspective of Alberta's separate school jurisdictions, full provincial funding eliminated the consistent funding disadvantage that plagued separate jurisdictions for the previous three decades. Indeed, as a class of schools, separate schools benefited the most from full provincial funding.

On December 3, 1997, The Ottawa Citizen contained the front-page headline, *Abolish Separate Schools? It's Just a Matter of Time*. "…changes are sweeping the religion-based school systems in Quebec and Newfoundland, a secular wind blowing away more than a century of tradition. Can Ontario be far behind" (Egan, 1997)? The elimination of minority religious schools in Quebec and Newfoundland left Ontario, Alberta and Saskatchewan as the only provinces in Confederation that still have constitutional protection for such schools. Such speculation as contained in this quotation from the daily newspaper serving our nation's capital certainly could create anxiety among separate school supporters in those three remaining provinces. Despite the Minister of Education having pledged the Alberta provincial government's continued support of separate schools in October 1997, the President of the Alberta Catholic School Trustees' Association and Chair of Evergreen had the following to say in February 1998 in a Grove Examiner (Spruce Grove) report on the last of the negotiated voluntary separate regionalizations:

> "As a Catholic community in the province, we capitulated. Do we see government try to take another kick at us in the future? The right to exist is protected…but the rights of Catholic education in other parts of Canada have recently come under fire." He suggested local Catholic parents remain vigilant to ensure their rights are not eroded in Alberta ("Separate school division," 1998).

There is indeed an interesting dilemma in the realization that a majority, by popular vote, can successfully take away the protected rights of a minority that the Fathers of Confederation considered essential. It does indeed leave members of such a minority with strong motivation to carefully guard, nurture, and exercise the rights they do have.

CHAPTER TEN

FURTHER GUIDANCE FROM THE COURTS IN TIMES OF CHANGE

Introduction

The restructuring in the mid 1990s in Alberta represented, overall, the most significant level of change to the governance and finance of schooling since the province joined Confederation ninety years earlier. There were also dramatic changes in other Canadian provinces. These changes impacted separate schools as well as public schools and many of the issues were directly related to constitutionally protected minority rights for separate schools potentially as they apply to Alberta.

These significant changes resulted in court challenges. This chapter will look at five court cases that defined the limits of provincial government authority to make changes, with particular emphasis on changes to minority religious education rights. One case (*Adler*) considers an issue inspired by the lack of change. Three of these cases come from Ontario with one each from Alberta and Newfoundland.

The Ontario Home Builders' Case (1996): *Ontario Home Builders' Assn. v. York Region Board of Education, [1996] 2 S.C.R. 929, Supreme Court of Canada.*

The *Ontario Home Builders' Case* is important for separate school rights in that it defined the practical application of the principle of proportionality in the distribution of provincial funds between public and separate school jurisdictions. It also returned to the *Charter* issue of extending certain rights to separate schools but not to supporters of other religions.

Section 30 of the *Development Charges Act* (1990) of Ontario provided that if a residential development increased education capital costs in the area of a school board's jurisdiction, that school board could pass by-laws imposing "educational development charges" (EDCs) against the land undergoing residential and commercial development. Under section 35, the EDC was payable to the municipality in which the development took place on the date that a building permit was issued and the municipality could withhold the building permit until the EDC was paid. With the consent of the Minister of Education, a school board could accept the provision of school facilities from an owner in lieu of the payment of all or any part of the EDC. EDCs as a condition of receiving a building permit replaced lot levies as a condition of subdivision approval in the planning process.

Pursuant to Regulation 268 under the *Development Charges Act* (1990), the Minister of Education must approve a school board's plans for school facilities that constitute an education capital cost, before an EDC by-law can be passed. The Minister must approve the construction cost and site cost. EDCs could only be used to fund the local share of education capital costs and were thus limited by the level of provincial capital grant. A school board could not withdraw funds from an EDC account unless final approval for the project had been given by the Minister. If two or more coterminous school boards both passed EDC by-laws, the proceeds were deposited into two commingled bank accounts. Funds from these accounts could only be withdrawn with the signatures of the treasurers of all the coterminous boards on whose accounts the moneys had been deposited.

The coterminous York Region Board of Education and York Region Roman Catholic Separate School Board both passed EDC by-laws. Humber Green Estates Ltd. and Butternut Grove Homes Inc. were land developers and home builders in Southern Ontario, including the York Region. In September 1992, the Ontario Home Builders' Association and these two developers initiated an application in the Ontario Divisional Court for judicial review of the by-laws passed by the two York Region school boards. There were three major points at issue: 1) whether the *Development Charges Act* (1990) was *ultra vires* the province with respect to section 92 of the *Constitution Act* (1867), 2) whether the *Act* violated the guarantees given to separate school supporters pursuant to section 93(1) of the *Constitution Act* (1867) and the principle of proportional funding, and 3) whether the *Act* was a violation of the equality sections 2(a) and 15(1) of the *Charter of Rights and Freedoms*.

Section 92 of the *Constitution Act* (1867) provided in part as follows:

> 92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,--
>
> 2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

9. Shop, Saloon, Tavern, auctioneer, and other Licences in order to the raising of Revenue for Provincial, Local, or Municipal Purposes.

13. Property and Civil Rights in the Province.

16. Generally all Matters of a merely local or private Nature in the Province.

An Act to restore to the Roman Catholics in Upper Canada certain Rights in respect to Schools (1863), the *Scott Act*, is the precedent legislation protected by section 93(1) of the *Constitution Act* (1867). Section 20 of the *Scott Act* enshrined the principle of proportionality in all public grants, investments and allotments provided by the provincial legislature for common (public) schools and separate schools based on the number of students attending. This principle was reiterated in section 122(1) of the *Education Act* (1990) that stated, "Every separate school shall share in the legislative grants in like manner as a public school."

In a 1993 majority decision, the three-member panel at the Ontario Divisional Court found that the EDC scheme was constitutionally invalid under both sections 92(2) and 93(1) of the *Constitution Act* (1867). The York Region public and separate school boards and the Attorney General of Ontario appealed the lower court decision to the Ontario Court of Appeal. In a 1994 majority decision, the Ontario Court of Appeal agreed with the lower court that EDCs were an indirect tax and thus invalid under section 92(2) which permitted only direct taxation but were nonetheless constitutionally valid under one or more of subsection 92(9), (13) and (16). The Court of Appeal reversed the lower court's decision that the Ontario Home Builders' Association and the two developers had standing to argue the section 93 proportionality issue saying the respondents "sole interest is in the EDC and their obligation to pay it" (par. 18).

The Ontario Home Builders' Association and the two developers were given leave to appeal the Ontario Court of Appeal's decision to the Supreme Court of Canada. The case was heard in October 1995 with the decision being delivered on August 22, 1996. The court was unanimous that the appeal should be dismissed, but were in disagreement on the reasons. Justice Iacobucci delivered the majority position on behalf of five of the nine Justices, including Chief Justice Lamer. Justice Iacobucci agreed with the Court of Appeal on the issue of direct versus indirect taxation.

Justice Iacobucci took a different position than the Court of Appeal respecting the standing of the appellants to challenge under the section 93(1) proportionality issue. "Because of the serious and complex nature of the issues before this Court, I will assume, without deciding, that the appellants have standing" (par. 30). The appellants had submitted that the EDC scheme prejudicially affects the rights of separate school supporters to a proportionate share of all public monies, apart from local assessments, and to be exempt from paying assessments for public school purposes. Justice Iacobucci stated that, even if EDCs could be characterized as grants, section 20 of the *Scott Act* has never applied to capital grants. "It would be absurd to require the Province to fund the construction of an unneeded separate school simply because the local public school board needed and received provincial funding for a new school" (par. 72). Justice Iacobucci went on to conclude:

> I find myself in agreement with the respondents' submission that s. 20 of the Scott Act does not impose "a procrustean obligation of proportionality in its strict terms". In my view, when one reviews the history and purpose of s. 93(1), the principle of proportionality can be seen for what it really is, namely, the means to a constitutional end which is *equality of education opportunity* [emphasis added]…While the notion of proportionality contained in s. 20 of the Scott Act is a constitutional right embodied in s. 93(1), the substantive purpose of this notion must be borne in mind: the achievement of an educational system that distributes provincial funds in a fair and non-discriminatory manner to common and separate schools alike (par. 73).

The question of the EDC scheme being in violation of rights to religious freedom and to equality under the law under sections 2(a) and 15 of the *Charter* was based on the fact that EDCs can be levied by Roman Catholic Separate School Boards on all new homes, whereas supporters of other religions do not have the ability to impose EDCs. Justice Iacobucci stated:

> It is my view…that the EDC scheme…pursues the constitutionally required objective of providing separate schools with funding that is on par with the funding received by public schools. As a right or privilege enjoyed by separate schools at Confederation, this form of legislation is required by the provisions of s. 93 of the Constitution Act, 1867. As such, the legislation is immune from scrutiny under the Charter (p. 40).

In the minority opinion of Justice La Forest on behalf of the remaining four Justices, the principal difference from the majority was that the EDC scheme was valid under section 92(2) of the *Constitution Act* (1867) as being, in pith and substance, direct taxation. So taken was Justice La Forest with the phrase *pith and substance* that he used it no less than 32 times in writing his minority argument. This prompted Justice Iacobucci, in an addendum he added to his opinion, to speculate that "La Forest J. …seems to be concerned that I have not used the words 'pith and substance'; however, it is my opinion that the use of such terminology would not change the analysis or conclusion (par. 84).

Justice Iacobucci spoke of the distribution of *provincial* funds in a fair and non-discriminatory manner but also refers to the EDC scheme as pursuing the constitutionally required objective of funding separate schools on par with public schools. This appears to partially address the constitutional question raised at the end of Chapter Eight.

The Adler Case (1996): *Adler v. Ontario, [1996] 3 S.C.R. 609, Supreme Court of Canada.*

The *Adler Case* clarified whether by funding separate religious schools but not private religious schools or by funding public secular schools but not private religious schools a province violates either the freedom of religion section 2(a) or the equal benefit under the law section 15(1), with respect to religion, of the *Charter of Rights and Freedoms* contained in the *Constitution Act* (1982). Also addressed was whether a province that chooses to fund minority religious schools other than the Protestant or Roman Catholic minorities protected under section 93(1) of the *Constitution Act* (1867), as does Alberta, would be in violation of the *Charter*. The *Adler Case* clarified what rights and privileges of public schools, if any, are recognized and protected under section 93 of the *Constitution Act* (1867).

The Province of Ontario provides no funding to its private schools. Two groups of Ontario parents made applications to the Ontario Court for a declaration that the education funding scheme in Ontario under the *Education Act* (1990) violated their religious and equality rights under the *Charter*. The first group of five parents (the "Adler appellants" after parent Susie Adler) sent their children to private Jewish schools. Private Jewish schools had existed in Ontario since 1949 with total enrolments reaching about 10,000 students. The children of the second group of four parents (the "Elgersma appellants" after parent Leo Elgersma) attended independent Christian schools. The Ontario Alliance of Christian School Societies joined the Elgersma parents in their application. There were at the time 73 Christian schools in Ontario of which most supporters belonged to the Christian Reformed Church. Both applications also objected on similar grounds that the School Health Support Services Program provided to special needs students in the public and separate schools, Regulation 552 under the *Health Insurance Act* (1990), was not available to special needs students in private schools.

In 1992, the trial judge found that both the applicants religious and equality rights guaranteed under the *Charter* were infringed by the province's education funding scheme but that the legislation was justified under section 1 of the *Charter*, which provides that rights and freedoms set out in the *Charter* are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The Ontario Court of Appeal found in its 1994 majority decision that the trial judge had erred in finding a section 2(a) violation, which can only consist of state action that limits religious practice. But the appellate court agreed with the trial judge that even if the appellants' *Charter* rights had been infringed, the absence of funding for private religious schools was a reasonable limit under section 1 of the *Charter*.

The appellants next turned to the Supreme Court of Canada. By order of Chief Justice Lamer dated May 16, 1995, the relevant constitutional questions were identified and are summarized as follows:

1. Do the definitions of "board" and "school" in section 1(1) of the *Education Act* (1990) together with the annual General Legislative Grants infringe or deny the appellants' freedom of religion under section 2(a) of the *Charter* by not providing funding to religious based independent schools?
2. Do the above noted definitions and grants infringe or deny the appellants' equality rights under section 15 of the *Charter* by providing funding to Roman Catholic separate school boards, or to secular public school boards, but not to religious based independent schools?
3. If the answer to any of these questions is in the affirmative, is that distinction justified as a reasonable limit pursuant to section 1 of the *Charter*?

The Supreme Court heard the case in January 1996 with the court's decision being delivered on November 21, 1996. As with the *Ontario Home Builders'* decision three months earlier, Justice Iacobucci once again delivered the majority position on behalf of five of the nine Justices, including Chief Justice Lamer.

Justice Iacobucci, as had Justice Gonthier in *Reference re Education Act-Quebec* (1993), made reference to the significance of section 93 of the *Constitution Act* (1867). "Section 93 is the product of an historical compromise which was a crucial step along the road leading to Confederation... Without this 'solemn pact', this 'cardinal term' of Union, there would have been no Confederation" (par. 29).

With respect to the freedom of religion argument under section 2(a) of the *Charter*, Justice Iacobucci was of the opinion that the argument "fails because any claim to public support for religious education must be grounded in s. 93(1) which is a 'comprehensive code' of denominational school rights" (par. 27). Justice Iacobucci then drew an analogy between minority religious education rights and minority language educational rights based on the Alberta experience.

> Like s. 93, s. 23 has its origins in political compromise...both sections grant special status to particular classes of people. Dickson C.J. discussed the entrenched inequality created by s. 23 in Mahe v. Alberta, [1990] 1 S.C.R. 342. In his words, s. 23 provides a "comprehensive code", a unique source for minority language educational rights...English speakers living in francophone provinces and French speakers living in anglophone provinces would enjoy rights which are denied to other linguistic groups (par. 31, 32)...
>
> In my opinion, the reasoning used in Mahe is equally applicable to the appellants' attempt to use s. 2(a) in combination with s. 15(1) to expand on s. 93's religious educational guarantees. Thus, just as s. 23 is a comprehensive code with respect to minority language education rights, s. 93 is a comprehensive code with respect to denominational school rights. As a result, s. 2(a) of the Charter cannot be used to enlarge this comprehensive code. Given that the appellants cannot bring themselves within the terms of s. 93's guarantees, they have no claim to public funding for their schools...To decide otherwise by accepting the appellants' claim that s. 2(a) requires public funding of their religious schools would be to hold one section of the Constitution violative of another (par. 35).

With regard to the appellants' argument that the government's choice to fund Roman Catholic separate schools but not other religious schools contravened s. 15(1) of the *Charter*, Justice Iocabucci referenced Justice Wilson's discussion in *Bill 30-Ontario Reference* (1987). Section 29 of the *Charter* explicitly exempts from *Charter* challenge all rights and privileges guaranteed under the section 93(1) of the *Constitution Act* (1867) [Chapter Four, page 109].

The appellants advanced a further section 15(1) argument that even if Roman Catholic separate schools were given a privileged place in our constitutional scheme, secular public schools are given no such protection. According to this argument, the fact that the government funds secular public schools but not private religious schools "is analogous to the government funding, for example, private Christian schools but not private Islamic schools. As the reasoning went, public schools are not a part of the scheme envisioned by s. 93 and are, thus, open to Charter challenge" (par. 40). But Justice Iacobucci found that the public school system is an integral part of the section 93 compromise since the *Scott Act* equated the rights and privileges of separate schools to those of public schools. Roman Catholic parents could choose between two publicly funded educational systems and section 93 gave constitutional protection to that choice. "Therefore, the public school system is an integral part of the Confederation compromise and, consequently, receives a protection against constitutional or Charter attack" (par. 46). This finding by Justice Iacobucci tends to raise an important question about whether the rights of public schools at the time of Confederation were protected, as were the rights of separate schools. Fortunately, he cleared that up for us, making specific reference to the province's plenary power in the opening paragraph of section 93.

> This protection exists despite the fact that public school rights are not themselves constitutionally entrenched. It is the province's plenary power to legislate with regard to public schools, which are open to all members of society, without distinction, that is constitutionally entrenched…funding for public schools is insulated from Charter attack as legislation enacted pursuant to the plenary education power granted to the provincial legislature as part of the Confederation compromise (par. 47)… The province remains free to exercise its plenary power with regard to education in whatever way it sees fit, subject to the restrictions relating to separate schools imposed by s. 93(1) (par. 48).

Of particular interest to provinces that fund private schools, Justice Iacobucci goes even further to clarify that the province could fund private religious schools if it wanted to. The province's legislative power is not limited to only the public schools and the separate schools. The province could, if it chose, pass legislation extending funding to denominational schools other than Roman Catholic "without infringing the rights guaranteed to Roman Catholic separate schools under s. 93(1)… However, an ability to pass such legislation does not amount to an obligation to do so" (par. 48).

Justice Iacobucci characterized the impugned special needs services as "education services" rather than "health services" and dismissed the appellants appeal using the same logic as he had in dismissing the appeal for non-funding of independent religious schools.

Justice Sopinka provided a concurring minority opinion on the question of a section 15 equality violation. Where Justice Iacobucci had limited his reasoning to the fact that both the separate system and public system are immune to *Charter* attack by virtue of protection afforded by section 93 of the *Constitution Act* (1867), Justice Sopinka stated that the appellants' argument fails under section 15 itself. "No private schools receive funding whether they are religious or secular. No religion is given preferential treatment within the system. The distinction between 'private' and 'public' institutions is neither an enumerated nor analogous ground in s. 15 of the Charter" (par. 188).

Justice L'Heureux-Dube in his minority opinion found, as did Justice McLachlin, that the provincial funding scheme did offend the equality rights under section 15(1). It constituted not only a financial prejudice but also a complete lack of recognition of the educational needs of the children and the parents' fundamental interest in the continuation of their faith.

> The distinction created under the Education Act gives the clear message to these parents that their beliefs and practices are less worthy of consideration and value than those of the majoritarian secular society. They are not granted the same degree of concern, dignity and worth as other parents. I conclude that the Education Act funding scheme results in a prima facie violation of s. 15's guarantee of equal benefit of the law without discrimination…we cannot imagine a deeper scar being inflicted on a more insular group by the denial of a more fundamental interest; it is the very survival of these communities which is threatened (par. 86).

Justice L'Heureux-Dube was also of the opinion that this violation of section 15 could not be reasonably justified under section 1 of the *Charter*. He actually encouraged the partial funding of independent religious schools, noting that the respondents had failed to prove that a complete denial of funding constituted a minimal impairment of the right.

> While partial funding is, on the evidence submitted by the respondents, a means for impairing the right in question, yet fulfilling the objectives of the legislation, this option was not implemented by the legislature. I thus cannot agree with the

> conclusion that it is impossible to say whether a less intrusive measure such as partial funding might achieve the same objective with less of an infringement. In fact, partial direct funding to independent religious schools, is currently provided in five Canadian provinces, namely, Quebec, Manitoba, Saskatchewan, Alberta, and British Columbia…Partial funding would actually further the objective of providing a universally accessible education system and promote the value of religious tolerance in this context where some religious communities cannot be accommodated in the secular system (par. 106).

There was yet another chapter to write concerning the issue of a province in Canada, Ontario, funding separate minority religious schools but not private minority religious schools. A group of parents in Ontario did not wait for the Supreme Court's decision in *Adler*. That case was heard in January 1996 but the decision was not delivered until the following November. In the interim, one Arieh Hollis Waldman authored a communication claiming religious discrimination to the international Human Rights Committee of the United Nations dated February 29, 1996. The Committee rendered its decision on November 3, 1999, referenced as the *Waldman* decision.

> …the fact that a distinction is enshrined in the Constitution does not render it reasonable and objective. In the instant case, the distinction was made in 1867 to protect the Roman Catholics in Ontario. The material before the Committee does not show that members of the Roman Catholic community or any identifiable section of that community are now in a disadvantaged position compared to those members of the Jewish community that wish to secure the education of their children in religious schools. Accordingly, the Committee rejects the State Party's [Government of Canada's] argument that the preferential treatment of Roman Catholic schools is non-discriminatory because of its Constitutional obligation (*Waldman* decision, 1999).

Despite this international rebuke, the Province of Ontario still provides no funding to private schools. There was a partial relenting when, in the Province's budget speech in May 2000, the Minister of Finance announced that, through the Minister of Health, funding for the medical requirements of special needs students would be extended to all denominational schools. So much for the effectiveness of the international Human Rights Committee:

> …such a decision does not give rise to legal sanctions but may result in political action. However, the courts may rely on international law as an interpretative guide, which might mean that a case similar to *Adler* might be decided differently in the future. However, at the present time, the *Waldman* decision does not form part of the law of Canada…(Smith and Foster, 2001, May: p. 41).

The international Human Rights Committee renewed its concern in its latest observations on the State Party of Canada dated November 2, 2005:

> The Committee expresses concern about the State party's responses relating to the Committee's views in the case Waldman v. Canada…The State party should adopt steps in order to eliminate discrimination on the basis of religion in the funding of schools in Ontario (*Waldman* decision, 2005).

The Hogan Case (2000): *Hogan v. Newfoundland (Attorney General), [2000] N.J. No. 54, Newfoundland Court of Appeal; [2000] S.C.C.A. No. 191, Supreme Court of Canada.*

Following a successful referendum held by the Government of Newfoundland on September 2, 1997, the Governor General of Canada proclaimed into force the amendment to Term 17 of the Terms of Union between Canada and Newfoundland on January 8, 1998. This constitutional amendment eliminated the minority religious education rights of seven different denominations previously protected by Term 17 and created a single, non-denominational publicly funded school system for Newfoundland.

A group of Roman Catholic parents, including Robert and Dorothy Hogan, along with the Archbishop and Bishops of the various Roman Catholic dioceses of Newfoundland turned to the Newfoundland Supreme Court, Trial Division for help. They sought declarations that the proclamation was void and of no effect and that the funding by the Government of Newfoundland of a campaign supporting a particular position leading up to the referendum was contrary to sections 2 and 15 of the *Charter of Rights and Freedoms* (1982). These plaintiffs also sought declarations that rights guaranteed in Term 17 of the Terms of Union were not subject to abrogation under any of the amending formula in the *Constitution Act* (1982) nor could they be abrogated without the consent of the minorities affected.

The trial judge rejected the notion that Term 17 created perpetual contractual rights that were enforceable by the plaintiffs. He further rejected the request to estoppel, or bar the Governments of Newfoundland and Canada from proceeding with the amendment and stated that the amending procedure used under section 43 of the *Constitution Act* (1982) was appropriate in this case. The trial judge did direct the Government of Newfoundland to reimburse the plaintiffs for the approximate $135,000 they had expended on the "No" campaign. Because government money was used to promote the "Yes" side, it only seemed reasonable that the government should now pay "damages" to reimburse the "No" side.

The Roman Catholic plaintiffs appealed to the Newfoundland Court of Appeal with the Attorney General of Newfoundland and the Attorney General of Canada as respondents. The Attorney General of Newfoundland cross-appealed the award of damages to the appellants. The case was heard in June 1999 and the unanimous decision of the Court of Appeal's three justices was delivered on February 28, 2000. The appeal was dismissed and the cross-appeal allowed. The award of damages was rescinded. The appellants had failed to prove that the Government had guaranteed the right to publicly funded denominational education for as long as Roman Catholics wanted such funding. The Government had the power to amend Term 17 pursuant to the *Constitution Act* (1982). The bilateral procedure used involving both the provincial and federal governments pursuant to section 43 contained in Part V of the *Constitution Act* (1982) was permitted.

It had been the religious denominations, not the state, that had taken the initiative to develop schools in Newfoundland prior to Newfoundland joining Confederation in 1949. When the state did become involved in education, its role was not as the originator of a new separate school system but as supporting and enhancing the existing systems.

In the years leading up to Newfoundland joining Confederation, Joseph Smallwood was an advocate of Confederation, became a member of the National Convention and later Newfoundland's first Premier. Archbishop Edward Patrick Roche, Roman Catholic Archbishop of St. John's, on the other hand, was opposed to Confederation based on his fear of the eventual impact Confederation would have on denominational school rights. The submissions of the appellants were based, in part, on their allegation that Joseph Smallwood and Archbishop Roche entered into an agreement that the Archbishop would stay out of the Confederation debate in return for guarantees that there would be a publicly funded denominational education system in Newfoundland for as long as the various denominations wished to have one. Each denomination comprised a class of persons and each class had a separate right that could only be removed if that class wished to surrender their right.

Justice Cameron, on behalf of the Court of Appeal, found that no collateral agreement could put any person or group beyond the reach of the Constitution.

> The submission that there is an agreement, made prior to Confederation, which can now be enforced in the face of a conflicting constitutional provision or which is immune from a constitutionally mandated procedure for change cannot succeed, for a number of reasons. First…there is no evidentiary basis on the record to establish the existence of such an agreement. Secondly, even if such agreement existed, it was at most an agreement between a person or group with no proven authority to bind Newfoundland to a firm constitutional position, and a person who, though the Archbishop of one of three dioceses in Newfoundland, was not proven to have authority to bind the "class" of persons comprising all adherents of the Roman Catholic faith in the Province. Thirdly, a collateral agreement of the type argued for could not in any event override the constitutional text, including any amending formula that was ultimately agreed upon (par. 18).

While there may have been no surviving written evidence of such an agreement, there is little doubt of the importance Mr. Smallwood placed on denomination school rights. In the January 1948 meetings of the National Convention, Mr. Smallwood stated that he was determined not to advocate confederation until all denominational rights were fully guaranteed. Mr. Smallwood gave assurances that he was successful, "for the school rights of all our denominations have been fully protected and guaranteed" (par. 24). The April 7, 1948 edition of The Confederate, a newspaper published by those advocating Confederation with Canada, contained the following confirmation:

> All school rights are guaranteed just as they stand today… All these rights are written into the Terms of Confederation. So long as the denominations want to keep their separate, denominational schools, they can do so. If any two of them ever want to unite them, they can do so. And they will continue to receive their full share of money from the Public Chest. Confederation will not touch our schools. It will not put them in any danger whatever. Anyone who says otherwise is a liar (par. 24).

Indeed, protection of the publicly funded denominational schools "that any class or classes of persons have by law in Newfoundland at the date of Union" was written into Term 17 of the Terms of Union, "In lieu of section ninety-three of the British North America Act, 1867" (par. 9) and remained unchanged for half a century. However, Justice Cameron concluded that "the Terms of Union are part of the Constitution and, as a result, subject to the amendment procedures specified in Part V of the Constitution Act, 1982" (par. 61).

The appellants argued that Term 17, much like section 93 of the *Constitution Act* (1867), is part of the founding compromise and creates a specific fiduciary duty on the part of the government to those classes to preserve those rights. Justice Cameron responded that "there is no fiduciary duty on the respondents to refrain from exercising their rights under the Constitution without the consent of the class (adherents of the Roman Catholic faith)" (par. 69). The appellants took the position that it was represented to the denominational classes and authorities that the right to publicly funded denominational education was absolutely secure as long as they wished to exercise that right in order to induce those classes and authorities to refrain from opposing Confederation. The appellants maintained the applicability of the doctrine of estoppel, a principle of justice and equity in English common law that it would be unjust or inequitable for a person to go back on his word, or to act inconsistently with previous representations or actions. Justice Cameron was once again unimpressed. He concluded that "if a provision of the Constitution is amended in accordance with Part V of the Constitution Act, 1982 the doctrine of estoppel cannot succeed in thwarting that process" (par. 71).

The appellants finally argued that it is a role of the *Constitution* to protect minority groups from the whim of the majority. Once one places minority rights in the hands of the majority, it is a violation of the rule of law. Justice Cameron concluded:

> Neither the rule of law nor respect for minorities prevents the application of s. 43 to the amendment of Term 17. The appellants' position ignores the inescapable fact that the Constitution entrusts minority rights to the majority. The structure is designed not to prevent constitutional amendment but to ensure, by making the process more difficult than the passage of an amendment to any other bill, that the rights are given "due regard and protection." The appropriate provision in Part V in the Constitution having been complied with, the validity of the amendment to Term 17 cannot be questioned (par. 125).

The appellants had challenged the referendum process claiming that in funding the "Yes" campaign but not the appellants' "No" campaign, the provincial government had funded an attack on their religious beliefs constituting an infringement of the appellants' *Charter* guarantees of freedom of expression per section 2(b), freedom of religion per section 2(a) and equality under the law per section 15. The professional campaign paid for by the Government of Newfoundland made it impossible for the "No" side to run an effective, low budget campaign. Justice Cameron concluded than the appellants or others were not hindered from expressing their beliefs because of the government's open support of its own proposal. The fact that the government gave no funding to any groups to participate in the campaign was seen as equal treatment.

> Here, the allegation is that by advocating its own policy, the Government was drawing a distinction between the appellants and others, and by extension, since the appellants' stand was founded on their religious beliefs, governmental support of views which were contrary to those of the appellants amounted to discrimination…This reasoning is fallacious on many levels (par. 160, 162).

The legal basis of the appellants' claim to damages was a breach of the *Charter*. Since the evidence did not support a finding of a violation of sections 2(a) or 2(b) or 15, Justice Cameron accordingly allowed the cross-appeal and rescinded the award of damages to the appellants.

On November 9, 2000, the application of the appellants for leave to appeal to the Supreme Court of Canada was dismissed in an indexed decision. The Supreme Court gave no reasons for declining the application to hear the appeal.

The PSBAA Case (2000): *Public School Boards' Assn. of Alberta v. Alberta (Attorney General), [1995] 198 A.R. 204, Alberta Court of Queen's Bench; [1998] 60 Alta. L.R. (3d) 62, Alberta Court of Appeal; [2000] 2 S.C.R. 409, Supreme Court of Canada.*

Alberta's *School Amendment Act* (1994), Bill 19, amended the *School Act* (1988) and was proclaimed in May 1994. With the exception of a special school tax levy authorized by plebiscite, the ability of local school jurisdictions to raise money through direct property taxation was removed, taking away a privilege that had functioned for the previous century. All property tax revenues were pooled under the *Alberta School Foundation Fund* (ASFF) and then redistributed to school jurisdictions on an equal amount per student basis. Separate school jurisdictions were permitted to opt out of the ASFF and continue to requisition locally but must levy an equalized mill rate that is not less than the mill rate set by the province. If a separate jurisdiction levy yields less per student than the provincial average, the province tops up the difference. Should a separate authority ever collect more than the average, the excess is paid into the ASFF.

Bill 19 made the appointment of a Superintendent of Schools by a school board under section 94(1) of the *School Act* (1988) subject to "the prior approval in writing of the Minister" and limited such appointments to "a period of not more than 5 years." Under section 17(9)(b), the Minister may make regulations "respecting the roles of the principal and the school council of a school and their respective powers, duties and responsibilities." While school boards had long required Ministerial approval to borrow for capital expenditures, under section 167(1) boards now "shall not, without the prior written approval of the Minister," borrow to meet current expenditures if in aggregate such borrowings exceeded the board's accounts receivable shown in its most recent Audited Financial Statements. Alberta Education's *Framework for the Funding of School Authorities*, introduced in September 1995, placed expenditure restrictions on specific categories of expenditures for all boards, as detailed in the previous chapter, and prescribed the penalty for non-compliance. An amount equal to the dollar value of the offense would be withheld from provincial grants in the next fiscal period.

This erosion of local control over schooling was not welcomed by all concerned. The Public School Boards' Association of Alberta (PSBAA) and the Alberta School Boards' Association (ASBA) and others challenged in Court of Queen's Bench the constitutionality of some of the amendments to the *School Act* (1988). The PSBAA challenge was based on three issues. First, school boards were guaranteed *reasonable autonomy* under the *Constitution Act* (1867) through law or convention, or under section 2(b) and 7 of the *Charter of Rights and Freedoms* (1982) and that autonomy had been violated by the erosion of local control over the recruitment and direction of senior staff, program and management, and fiscal matters. Second, allowing only separate boards to opt out of the centralized funding system amounted to *discrimination* against public schools in violation of section 17(2) of the *Alberta Act* (1905). Third, the impugned provisions violated a principle of *mirror equality* implicit in section 17(1) of the *Alberta Act* [Section 17 is replicated in Chapter One, page 29]. ASBA took no part in the *reasonable autonomy* issue, arguing only the *discrimination* and *mirror equality* issues.

The Alberta Catholic School Trustees' Association (ACSTA) became a party in the litigation only to ensure that the action did not adversely affect the existing rights and privileges constitutionally guaranteed separate schools under section 17(1) of the *Alberta*

Act. Although ACSTA did not itself challenge the new legislative scheme, it none-the-less played a significant role. ACSTA specifically asked the court not to discuss the nature and extent of separate school rights guaranteed by section 17(1) of the *Alberta Act*, preferring to leave those rights undefined. Defining minority rights may be interpreted as limiting them. ACSTA also submitted that, if the new scheme was found to contravene *mirror equality* rights implicit in section 17(1) or to represent *discrimination* under section 17(2), any remedy given should expand the rights currently granted to public schools rather than abridge the rights accorded separate schools. Like ASBA, ACSTA took no position on the *reasonable autonomy* issue. The trial was completed in June 1995 with the judgment being issued November 28, 1995.

Justice Smith rejected the *reasonable autonomy* argument. He also held that the *School Act* amendments and the application of the Funding Framework's expenditure restrictions did not constitute *discrimination* against public schools under section 17(2). Justice Smith did find that the impugned legislation violated a principle of *mirror equality* implicit in section 17(1) and held the amendments invalid to the extent that they allowed only separate school boards to opt out of the ASFF. Justice Smith found it unnecessary to decide whether the Funding Framework's expenditure restrictions applied equally to all school boards and also did not discuss the nature and extent of the rights and privileges for separate schools under section 17(1).

PSBAA appealed both the *reasonable autonomy* and *discrimination* arguments. ASBA appealed only the *discrimination* issue and the Government of Alberta appealed the decision on *mirror equality*. ACSTA maintained the position it held at trial respecting the *discrimination* and *mirror equality* issues and again urged the court not to define the nature and extent of separate school rights under section 17(1). The Alberta Court of Appeal heard evidence November 18, 1996, January 24 and April 29, 1997. The appellant court's judgment was dated March 31, 1998. The three justices of the Court of Appeal were unanimous in determining the issues of *reasonable autonomy*, *discrimination* and *mirror equality*, but a minority opinion did, none-the-less, introduce controversy and uncertainty. Justice Russell, in her majority opinion, began by offering insight into the changes implemented by the province:

> By restructuring the way education was funded, the Government sought to remove fiscal inequity in the school system. The former funding scheme was characterized by school requisition mill rates that varied dramatically across the province, and fiscal disparity between school boards. Separate school boards were particularly disadvantaged (par. 3)...
>
> The Government chose to inject more equality into the education system through the creation of a full provincial funding scheme. While there were other options that the Government might have considered to remedy the inequities of the former funding system, it is not for this Court to decide whether there is a better option. The issue is whether the option chosen is constitutionally valid (par. 4).

After the evidence had been heard and while the appeal court's decision was *under reserve*, another panel of the Alberta Court of Appeal issued a judgment referenced as the *Capital Reserves Case*. The appellate justices for the *PSBAA Case* invited counsel for the parties to make submissions regarding any possible impact of the *Capital Reserves* decision on the *PSBAA Case*. With the introduction of the new Funding Framework in September 1995, the province had made the commitment to assume responsibility for all outstanding unsupported capital debt held by each school board. This commitment was conditional on school boards first applying their capital reserves to their unsupported capital debts for the 1993-1994 and 1994-1995 school years before the province would assume the indebtedness beginning in the 1995-1996 school year. The Edmonton Roman Catholic Separate School District challenged the authority of the government to impose such a condition. Both the judge in chambers and the Court of Appeal held that there was statutory authority for the imposition of the condition and dismissed the Edmonton Separate School District's case. In her decision in the *PSBAA Case*, Justice Russell determined that the *Capital Reserves Case* had some impact on the matters under appeal. "It signals the extent to which and the way in which government may control capital spending under the current legislation and is relevant to both the discrimination and reasonable autonomy issues" (par. 18).

Regarding the *reasonable autonomy* argument, PSBAA maintained that the ability of school boards to control program and management had been undermined by the new legislation, which made superintendents, principals and school councils directly responsible to the Minister of Education. Local fiscal control had been abolished by eliminating the power to tax locally, by restrictions on borrowing powers, and by stringent Framework conditions regarding spending allocations. PSBAA sought a declaration that school boards, as well as other forms of local government, "have limited reasonable autonomy in areas exclusively of local concern, which includes a guarantee for parents of a minimum level of local democratic participation in the control and management of the schools in which their children are taught" (par. 39). PSBAA's argument relied upon an interpretation of the terms "municipal institutions" in section 92(8) and "education" in section 93 of the *Constitution Act* (1867). Failing that, PSBAA argued that *reasonable autonomy* for school boards is protected by the *Charter* as both "freedom of expression" under section 2(b) and "liberty" under section 7, alleging that the impugned legislation diminishes parents' freedom of political expression and liberty to participate fully in the political process. Justice Russell stated:

> The trial judge...concluded that those institutions, including school boards, are only creatures of the legislatures, and their existence and powers are dependent upon the province, and not upon any constitutional status...While we endorse the concept of implicit constitutional norms, those norms must be grounded in the natural limits of the language of the constitution, and accepted constitutional principles respecting the scheme of federalism. In our view, neither that language nor any constitutional principle supports the notion of an entrenched reasonable autonomy for school boards, with the exception of the express and limited protection given to separate schools by virtue of s. 93 of the *Constitution Act, 1867* and various provincial constitutions (p. 13)...

Justice Russell also rejected the *Charter* argument in the absence of any evidence showing impairment of that freedom or liberty. "Indeed, there was some evidence that parents will have a more enhanced role under the new scheme" (par. 63). This statement is believed to be a reference to the requirement for school councils.

The trial judge, Justice Smith, had rejected the *discrimination* argument saying he was of the view that section 17(2) of the *Alberta Act* (1905) applied only to legislative grants from the province's General Revenue Fund and not to revenues derived from property taxation. But even if section 17(2) applied to the distribution of property taxes, the section was silent on the means by which the money is raised. Justice Smith referenced Justice Stevenson's decision in the *Calgary Public Case* (1981) [Chapter 2, page 64], and held that the standard for assessing whether there is discrimination ought to be based on fairness and not differential treatment. ASBA and ACSTA supported the view that, beyond grants, the protection provided by section 17(2) applies only to ASFF money and not monies requisitioned directly by opted out boards. The discrimination argument by PSBAA and ASBA was premised on their claim that the restrictions on spending set out in the Funding Framework, in fact, applied only to the use of ASFF and provincial grant money and not to opted out property taxes. Since separate boards can opt out of the ASFF and public boards cannot, it was said that separate boards have more flexibility in their spending than public boards. PSBAA referred to the result as "disparate impact inequality" (par. 75).

In addressing the *discrimination* issue, Justice Russell of the appellate court sat up an interesting chain of questions. If the spending restrictions apply to a broader base of funding for public boards than for opted out separate boards, then public and separate boards do not receive grants on identical conditions. Whether or not section 17(2) is limited to government grants from the province's General Revenue Fund, determining whether the Funding Framework's conditions apply to the local property requisition of opted out separate boards "may be fundamental to the determination of the discrimination issue" (par. 79). Thus it would need to be determined whether it is constitutional under section 17(1) to restrict the use by a separate board of its locally requisitioned monies. That would necessitate determining if separate schools had the right, under Chapters 29 and 30 of the *Ordinances* (1901) of the North-West Territories, to determine how their locally requisitioned monies would be spent without government interference and, if so, does the new funding scheme prejudicially affect that right?

ACSTA maintained it was premature for the court to determine whether the Funding Framework's conditions apply to local funds received by opted out boards since the government had not yet applied penalties to opted out boards. Justice Russell dismissed that logic for not addressing the question. If separate schools have the right under section 17(1) to control the use of tax monies, "any prejudicial effect would stem directly from the restrictions placed on that right and not from the penalty that could be imposed if the restrictions were violated" (par. 83). ACSTA further submitted that it was inappropriate to consider whether the new funding scheme violated the rights guaranteed to separate schools under section 17(1) when the issue at hand relates to an alleged violation of section 17(2). The determination under section 17(2) ought to be measured in terms of fairness between public and separate boards and not on the contents of rights under section 17(1). Justice Russell, "having regard to the principle that a court should not address a constitutional question where the case does not require it," found it unnecessary "to determine whether section 17(1) gives separate schools a right to control spending of their locally requisitioned monies, or whether the claw-back provision…is unconstitutional" (par. 88).

> …no evidence was tendered establishing a contextual framework within which to determine whether any rights which separate boards might enjoy to control spending, are prejudicially affected by the application of the *Framework*. Thus, for the purposes of this appeal, we must assume that the *Framework* does apply equally to all boards with respect to all funds in their hands (par. 88).

Justice Russell acknowledged that this decision left open the "unhappy prospect" (par. 90) that this issue might have to be relitigated in the future.

Having assumed that the spending restrictions of the Funding Framework apply to the opted out funds raised by separate boards without deciding the constitutionality of the issue, Justice Russell noted that that position considerably weakened the *discrimination* argument. The only remaining difference between public and separate boards the court would consider for the purpose of the section 17(2) *discrimination* claim was the ability of separate boards to opt out of ASFF. Justice Russell noted that while separate boards can get a portion of their assessment money directly from ratepayers while public boards cannot, public boards in turn get a larger chunk of the ASFF than opted out separate boards. Justice Russell concluded that the distribution of those funds does not discriminate again public schools and disagreed with the PSBAA and ASBA argument that differential treatment constituted discrimination under section 17(2).

> ASBA argued that if local requisitions received by opted out boards do not fall within s. 17(2), we cannot take those monies into account when assessing whether there is fairness within the meaning of s. 17(2). We do not agree. Even if opted out local requisition does not fall within s. 17(2), it must be remembered that the purpose behind the guarantee in s. 17(2) is the achievement of a system of education that distributes provincial monies fairly. Accordingly, we are of the view that in the determination of what is fair, we can take into account other revenues received by some boards but not others (par. 97). In conclusion, we are not persuaded that the system in place treats public schools in a discriminatory manner as that term is used in s. 17(2) (par. 98).

In support of the Justice Smith's decision at the lower court to accept the *mirror equality* argument under section 17(1), PSBAA and ASBA made reference to section

45(1) of the *School Ordinances* (1901), North-West Territories, which provided that a separate school district "shall possess and exercise all the rights, powers, privileges and be subject to the same liabilities and method of government as is herein provided in respect of public school districts." PSBAA and ASBA asserted that the effect of this provision, coupled with section 17(1), was to create mirror equality between public and separate schools. If separate schools are the same as public schools in respect to their rights and privileges, then it follows that public schools are the same as separate schools in those respects. Justice Russell concluded this reasoning was flawed.

> There is no constitutional mechanism to bring the mirror rights contained under s. 45(1) to life for public schools. By its clear wording, s. 17(1) applies to constitutionalize only the rights and privileges with respect to separate schools that existed under chapters 29 and 30 (par. 115).

Justice Russell found that whether it is assumed that opted out requisition funds fall within the scope of section 17(2) or whether it is assumed that they do not fall within section 17(2) made no difference to her determination that the funding scheme distributes provincial monies fairly. Justice Russell did conclude that local requisition dollars may be considered when adjudicating the test of fairness under section 17(2). This appears to address the question discussed at the end of Chapter Eight, that the consistent financial disadvantage of separate jurisdictions caused by increasingly disparate assessment bases and mill rates may have represented a constitutional violation under section 17(2).

Justice Russell had assumed that the spending restrictions contained in the Funding Framework apply equally to all boards, including the local requisition levied by separate boards opted out of ASFF, without determining the constitutionality of the matter because the outcome of the case did not require it. However, Justice Berger did not accept this position from the majority and was thus inspired to provide a minority opinion on the subject. "In my opinion, it is not possible to determine if there is discrimination under s. 17(2) without conducting an analysis of what is constitutionally protected under s. 17(1)" (par. 133).

Regarding the right of separate boards to directly access the property tax base, Justice Berger stated that "the right of separate schools to tax and spend is, in my opinion, inviolable. It is fundamental to the protection of denominational rights" (par. 152).

Justice Berger did not hold a favourable opinion about the claw-back provision contained in section 159.1 (4) of the *School Act*, which requires separate schools to remit any tax dollars above the provincial ASFF per student average to the provincial government. "It conscripts separate school supporters, constitutionally immunized and relieved from taxation in support of public school education, to fund public schools. Such a measure, in my opinion, is a clear violation of s. 17(1)" (par. 163). Justice Berger was none-the-less also of the opinion that opted out separate boards who raised less than that average were still entitled to be topped up from the ASFF. "If this were prohibited, then the only option left to less wealthy separate schools would be to 'opt in' and waive their constitutionally protected rights to levy taxes" (par. 175).

Before articulating his opinion on the applicability to separate boards of the restrictions on spending contained in the Funding Framework, Justice Berger took another small swipe at the position of the majority not to address the issue.

> To leave this question outstanding only invites further litigation on a matter already canvassed before the Court. ACSTA urged us not to decide this issue. But it advanced the alternative argument that the restrictions contained in the *Framework* infringe upon separate school rights to spend their tax funds without Government interference (p. 53).

Justice Berger stated that he could find nothing in the *Ordinances*, Chapters 29 and 30, to suggest that the government had any right to control how a separate board spent its property tax monies. "They were free to tax and spend in pursuit of their denominational agenda" (par. 181). Justice Berger took care to highlight that the Framework's conditions were not applicable to opted out requisition funds but were applicable to any top-up funds from the ASFF. Justice Berger either naively or purposely ignored the mathematical reality that percentage restrictions that do not apply to a significant portion of a board's funding do not, in function, apply to any of its funding.

Justice Berger did agree with the majority that section 17(2) did not support an argument of *discrimination* against public boards, and offered public boards some advice.

> It does not follow…that the exercise of a constitutionally protected right by separate schools results in discrimination against public schools within the meaning of s. 17(2)…Nor does s. 17(2) insulate public schools from spending controls imposed by a legislature that reflects the will of the majority (par. 186)… the Legislature of Alberta, expressing the will of the majority, has the jurisdiction

> to restrain public school boards from taxing their supporters. If public school board electors are unhappy, their remedy is at the ballot box (par. 187).

Justice Berger's findings represented a minority opinion and as such were not binding. However, it appears Justice Russell was sufficiently concerned that she felt it worthy to stress the point in her majority opinion.

> …having had the benefit of reading the separate reasons of Berger, J.A., we wish to make it clear that for the purposes of this appeal, we have accepted that the clawback is constitutionally valid and that the Framework applies to all Boards. We do not want our decision not to address these issues to be taken as concurrence with his conclusions on these points (par. 89).

Justice Russell stated first that, "we must assume" (par. 88) that restrictions apply followed by the somewhat stronger "we have accepted" (par. 89) that the provisions apply, without actually determining the issue.

PSBAA soldiered on alone challenging the finding of the Alberta Court of Appeal at the Supreme Court of Canada supported by the Calgary and Edmonton Public School Districts. ACSTA became a respondent along with the Attorney General of Alberta. The case was heard in March 2000 with the decision being delivered on October 6, 2000, over five years after the initial trial at Alberta Court of Queen's Bench.

The Supreme Court unanimously concluded that school boards do not enjoy *reasonable autonomy* from provincial control but are a form of municipal institution and are delegates of provincial jurisdiction under section 92(8) of the *Constitution Act* (1867). Neither the amended *School Act* nor the Funding Framework restrictions developed under that legislation violate section 17(2) of the *Alberta Act* (1905) by discriminating against public school boards in the appropriation or distribution of monies for the support of schools. The unique ability of separate boards to opt out of the ASFF is not a source of *discrimination*. Finally, section 17(1) of the Alberta Act does not import a principle of *mirror equality* for public school boards. Accordingly, the Supreme Court dismissed the appeal.

The Supreme Court agreed with the Court of Appeal that it was unnecessary to adjudicate the scope of separate school rights under section 17(1) in order to determine whether the impugned funding scheme meets the standard of fairness under section 17(2).

On the applicability of section 17(2) to funds raised by local requisition, Justice Major had the following to say on behalf of the Supreme Court:

> It is clear that s. 17(2) does not apply to property assessment monies not appropriated by the Legislature or distributed by the Government (par. 51)… The question remains, is the impugned legislation fair? I conclude that it is. If anything the scheme *as a whole*, which seeks to provide an equal per-student distribution of funds, gives effect to s. 17(2) fairness…through providing redress against prior intra-provincial funding inequities (par. 55) [emphasis added].

Justice Major describes a somewhat polar position that while section 17(2) does not apply to requisition dollars because they are not appropriated by the Legislature or distributed by the Government, they certainly appear to be part of the legislated funding scheme *as a whole* necessary to meet the test of fairness under section 17(2). This position also appears to support the constitutional concern raised in Chapter Eight. The general disadvantage experienced by separate jurisdictions prior to the new funding scheme in the levels of funding, *as a whole* including local requisitions, may not have met the test of fairness under section 17(2).

The Bill 160 Case (2001): *Ontario English Catholic Teachers' Assn. v. Ontario (Attorney General), [2001] 1 S.C.R. 470, Supreme Court of Canada.*

The *Bill 160 Case* for Ontario is of considerable significance to the current funding scheme in the Province of Alberta. It addresses some of the same issues that were addressed in the *PSBAA Case* for Alberta, but provides some further answers that the *PSBAA Case* did not.

In December 1997, the Legislature of Ontario passed Bill 160, the *Education Quality Improvement Act* (EQIA), which amended the *Education Act* (1990). The EQIA removed the ability of school boards to set property tax rates and centralized taxation power in the hands of the Minister of Finance. Unlike Alberta, Ontario school boards would still collect property taxes directly from municipalities but the Minister of Finance was empowered to prescribe the tax rates. Section 234(2) of the amended *Education Act* required that regulations made under subsection (1) shall ensure that the legislation and regulations governing education funding operated in a fair and non-discriminatory manner, "(a) as between English-language public boards and English-language Roman

Catholic boards; and (b) as between French-language public district school boards and French-language separate school boards." This guarantee applied not only to grants made under s. 234(1) but also to school board revenues from property taxes and education development charges. The new funding model determined the total annual funding a school board was to receive, just as in Alberta, thereby providing a ceiling on board expenditures for the year. The provincial grants were adjusted so that, when added to the revenues from property taxes and education development charges, that total annual funding level was achieved.

As was done in Alberta, expenditure restrictions were put in place to protect funds allocated to instruction from being spent on other areas. All grants were designated for either classroom or non-classroom spending. Funds designated for non-classroom spending could be reallocated to the classroom but funds designated for classroom spending could not be reassigned.

Under section 257.30(1), the Minister of Education and Training may investigate the financial affairs of a school board. If evidence was found of financial default or probable financial default, of a deficit or probable deficit, or of serious financial mismanagement, under section 257.31 the Minister may "give any directions to the board that he or she considers advisable" or may request the Lieutenant Governor in Council to vest financial control of the board with the Ministry for a specified period of time. This power was limited by section 257.52: the Minister could not interfere with the denominational aspects of a separate district school board or the linguistic or cultural aspects of a French-language district school board.

Two separate lawsuits were filed challenging the changes contained in Bill 160, one by the Ontario English Catholic Teachers' Association (OECTA) and another by the Ontario Public School Boards' Association (OPSBA) supported by both the Ontario secondary and elementary teachers' federations and the Toronto District School Board. Both groups argued that the new funding and governance model violated section 93(1) of the *Constitution Act* (1867) as it interfered with separate school rights to local control over property taxation and to local control over school finances and management. The second group also argued that the EQIA violated a constitutional convention and that the delegation of the setting of education tax rates to the Minister of Finance violated sections 53 and 54 of the *Constitution Act* (1867).

The two lawsuits were heard as one case. Justice Cumming of the Ontario Court (General Division) found in his July 1998 decision that the EQIA did not interfere with the inherent right of separate schools to management and control as section 93(1) primarily protects denomination rights. But Justice Cumming did find that the legislation violated the right of separate boards to local taxation as guaranteed by section 7 of the *Scott Act* (1863). Justice Cumming concluded that such interference was unconstitutional because it "makes the Roman Catholic community hostage to the provincial government as to the extent of financing of the separate school system" (par. 21). Justice Cumming rejected the remaining arguments before him.

With the announcement of Justice Cumming's decision, an Edmonton Journal editorial smugly trumpeted the effectiveness of the funding centralization scheme of Alberta's Klein government in comparison to that of Ontario's government lead by Premier Mike Harris.

> …there's a smart way to do this centralization and a dumb way. The Klein government appears to have taken the smart route, the Harris team the dumb route…Separate school boards in Alberta and Ontario have special constitutional protection…When the Klein government did its centralization back in 1994, it didn't mess with that constitutional right; it allowed Catholic school boards to continue levying their own school taxes. The Harris team decided to ignore the Constitution and treat all school boards the same; it has just had its knuckles rapped for that error ("Alberta has found," 1998).

Fears were raised among Ontario's Catholic education leaders that the decision of Justice Cumming against the Government of Ontario might lead to the constitutional elimination of Ontario's separate schools.

> Justice Peter Cummings' [sic] detonation of the Ontario governments [sic] education reforms is raising fears that his ruling might one day lead to the elimination of Ontario's Roman Catholic schools. That's a very evident danger, Regis O'Connor, President of the Ontario Catholic School Trustees Association said… It's very disturbing… The federal government recently agreed to requests from both the Newfoundland and Quebec governments to amend the Constitution and eliminate the special rights of separate schools in those provinces. In his ruling, Cumming maintained that only a similar constitutional amendment would permit the Ontario government to take away the taxing powers of the provinces [sic] Roman Catholic schools. There is the view that this kind of decision gives

> the government an opening it didn't have before to say lets get rid of these guarantees, because they cause difficulties even for those plans that the separate school trustees support, said Andrew Sancton, a political scientist at the University of Western Ontario.
>
> O'Connor pointed out that the separate-school boards supported Bill 160 and wanted no part of the court challenge because trustees believed direct provincial funding would benefit poorer Roman Catholic boards. The trustees were also reassured by Conservative pledges to preserve the separate-school system (Ibbitson, 1998).

Both groups next appealed to the Ontario Court of Appeal. The respondent Attorney General of Ontario appealed the lower court's decision regarding the right of separate school boards to tax their supporters. In its April 1999 decision, the Court of Appeal unanimously dismissed the appellants' appeal but allowed the respondent's appeal. The appeal court concluded that section 93(1) guarantees only the funding of denominational schools, not a right of separate school boards to tax their supporters and reversed the lower court's decision.

Both groups of appellants next turned to the Supreme Court of Canada. The case was heard in November 2000. The Supreme Court provided its unanimous decision on March 8, 2001. Justice Iacobucci, on behalf of the Court, began his decision by referencing a Canadian distinction and including a quote from Justice Wilson, *Bill 30-Ontario Reference* (1987):

> In many countries, education issues are matters of public policy, to be decided by democratic debate. In Canada, we are in the rather unusual position of having certain education rights constitutionally entrenched in s. 93 of the Constitution Act, 1867. This state of affairs is the product of our history, stemming from what this Court has referred to as "a solemn pact resulting from the bargaining which made Confederation possible" (par. 1).

Justice Iacobucci referenced a difference of opinion within the Catholic community:

> The Catholic community in Ontario is apparently divided as to the constitutional validity of the EQIA. The intervener Ontario Catholic School Trustees' Association ("OCSTA") represents 29 English-language separate school boards in the province. The intervener Association franco-ontarienne des conseils scolaires catholiques represents French-language separate school trustees. Both of these interveners support the respondent's position that the EQIA is constitutionally valid (par. 9).

The Justice stated that the denominational tax base had not been altered by the EQIA as residential taxpayers continue to designate their education taxes for either the public or separate system. Business property tax revenue is shared between boards within coterminous boundaries on the basis of student enrolment. This is similar to Alberta where residential taxpayers also continue to designate their education taxes for either the public or separate system. This is necessary whether the separate jurisdiction has opted out of the Alberta School Foundation Fund (ASFF) or not in order to support the potential of a successful plebiscite for a special tax levy, although there has yet to be such a successful plebiscite. The difference in Alberta is that a share of corporate assessment, in proportion to the faith of the shareholders, may also be designated to separate schools. Alberta residential or corporate education taxes not designated to an opted out separate jurisdiction are pooled in the ASFF.

Just Iacobucci again quoted from Justice Wilson when he stated that:

> …this Court employs "a purposive approach to s. 93". Such an approach gives provincial legislatures the flexibility to use the plenary power granted to them in s. 93 to alter their education systems…the rights guaranteed by s. 93(1) do not replicate the law word-for-word as it stood in 1867. It is the broader purpose of the laws in force which continues to be protected. Therefore, s. 93(1) should be viewed as protecting the denominational aspects of education, as well as those non-denominational aspects necessary to deliver the denominational elements (par. 32).

Respecting the impact of the EQIA on the denominational aspects of education, the Justice then concluded:

> The EQIA does not interfere with denominational aspects of education, either directly or indirectly. Roman Catholic school boards remain free to hire Roman Catholic teachers and chaplains, construct chapels, and tailor curricula to reflect Catholic values. The EQIA affects only secular aspects of education, such as class-size, teacher preparation time, teacher and trustee salaries, adult education, and computers in the classroom (par. 40).

Justice Iacobucci also found constitutional the provision that under certain conditions the Minister may take over the financial control of a school board, noting that, in his opinion, the EQIA provides greater protection to denominational rights than the legislation upheld by the Ontario appellate court in the *Ottawa Commission Case* (1917). Section 257.40(5), in addition to section 257.52(1), of the EQIA specifically forbids the

Minister from interfering with the denominational aspects of separate schools. "The protection provided by s. 257.52(1) is sufficient on its own to meet the requirements of s. 93(1) of the Constitution Act, 1867" (par. 46). But section 257.40(5) also provides that whether such interference has occurred can be reviewed by the courts. Provincial supervision cannot be for an indefinite period of time. And under section 257.50, the Minister's control must be revoked when the board no longer has a deficit or when the Lieutenant Governor in Council is of the opinion that board control should be restored.

Justice Iacobucci next turned to the issue of whether section 93(1) protects a separate board's right to tax:

> It is beyond question that Roman Catholic school boards in Ontario had the legal right to tax their supporters in 1867. Section 7 of the Scott Act explicitly conferred this right… The political reality at the time was that education could only be paid for out of funds raised locally (par. 48)… However, the fact that the right to tax existed in 1867 does not mean that it is automatically protected by s. 93(1). Section 93(1) only protects rights or privileges "with respect to Denominational Schools"… I agree with the Court of Appeal that the authority to tax supporters is not a right or privilege "with respect to Denominational Schools". Section 93(1) protects the right to funding for denominational education, not the specific mechanism through which that funding is delivered" (par. 49).
>
> …The Scott Act includes two funding mechanisms for denominational schools in Ontario: local taxation (s. 7) and provincial grants (s. 20). The province is generally free to alter the funding allocation between these sources as it sees fit, provided that the source relied on provides sufficient funds to operate a denominational education system which is equivalent to the public education system in place at the time. The animating principle is equality of educational opportunity (par. 50).

Justice Iacobucci noted that the EQIA specifically mandates fair and equitable treatment in the distribution of funds and that the plight of separate schools has actually improved.

> As the intervener OCSTA states in their factum, the new funding model produces "the cherished result of equitable per pupil funding". The EQIA therefore does not prejudicially affect the right of separate schools to fair and equitable funding as guaranteed by s. 93(1) of the Constitution Act, 1867 through the operation of ss. 7 and 20 of the Scott Act (p. 23).

Justice Iacobucci's decision did offer one caveat. "I need not decide the constitutionality of removing the local tax base altogether, as the EQIA does not attempt to do so" (par

50). However, it would appear that he left little doubt about what the Court's decision might be in such an instance in this selected recap of the Court's unanimous finding:

> Section 93(1) only protects rights or privileges "with respect to Denominational Schools"...the authority to tax supporters is not a right or privilege "with respect to Denominational Schools". Section 93(1) protects the right to funding for denominational education, not the specific mechanism through which that funding is delivered...provided that the source relied on provides sufficient funds to operate a denominational education system which is equivalent to the public education system in place at the time. The animating principle is equality of educational opportunity (par. 49, 50).

Justice Iacobucci reinforced this position when he made a nice segue from the rights of separate boards to the rights of public schools:

> Having found that separate school boards in Ontario have neither a right to independent taxation nor an absolute right to independent management and control, one can conclude that public school boards in the province also do not have such rights. Subject to s. 93, public school boards as an institution have no constitutional status (par. 57)... But s. 93 provides no constitutional protection for the design of the public school system. The Constitution gives the provincial government the plenary power over education in the province, and it is free to exercise this power however it sees fit in relation to the public school system (par. 61)...
>
> I also reject the argument that a constitutional convention has arisen regarding the design of the public education system in Ontario (par. 63)... Constitutional conventions relate to the principles of responsible government, not to how a particular power, which is clearly within a provincial government's jurisdiction, is to be exercised (par. 65).

Justice Iacobucci finally addressed the question of whether delegation of the setting of education tax rates to the Minister of Finance violates section 53 and 54 of the *Constitution Act* (1867) and represents taxation without representation. Justice Iacobucci first pointed out that section 54 is not relevant to the issue as it is directed to the House of Commons alone. Section 53 does not prohibit Parliament or the provincial legislatures from vesting any control over taxation in statutory delegates.

> ...if the legislature expressly and clearly authorizes the imposition of a tax by a delegated body or individual, then the requirements of the principle of "no taxation without representation" will be met (par. 74) ...the delegated tax must be a direct tax, given that s. 92(2) of the Constitution Act, 1867 assigns to the provinces only the power of "Direct Taxation within the Province in order to the

> raising of a Revenue for Provincial Purposes". Property taxes for education purposes are a direct tax, and so are intra vires the province (par. 79).

In addition to the issues addressed in the *Bill 160 Case*, Bill 160 also removed teacher working conditions from the realm of collective bargaining. Chief among these was the loss of control over paid lesson preparation time and class sizes. The tabling of Bill 160 in the Ontario legislature resulted in massive protests and strikes by Ontario's teachers. This may explain why it was that the Ontario English Catholic Teachers' Association challenged the constitutionality of the impact on separate schools and not the Ontario Catholic School Trustees' Association whose members recognized that separate jurisdictions were financially better off under the new funding scheme. It may likewise explain why both the Ontario Secondary Teacher's Federation and the Ontario Elementary Teachers' Federation chose to be co-plaintiffs with the Ontario Public School Boards' Association in testing the constitutionality of the impact on public schools. Perhaps the teachers were hoping that Canada's courts would accomplish what their protests and strikes had not.

Key Findings

This set of judicial decisions defined the authority of provincial governments to make the legislative changes to the governance and finance of schooling that occurred in the 1990s. The specific focus was on the constitutionality of these changes and, in particular, the impact on separate schools and minority religious education rights. The *Adler Case* also revealed a consequence of not making change. The following key findings are relevant for Alberta's separate school system.

1. *The principle of proportionality in the distribution of funding between public and separate schools is embodied in section 93(1) of the* Constitution Act *(1867). Its purpose is not as a strict "procrustean" obligation but rather the fair and non-discriminatory distribution of funding as the means to equality of educational opportunity (Ontario Home Builders).*
2. *If supporters of private religious schools cannot bring themselves within the terms of the guarantees under section 93, they have no constitutional claim to public funding for their schools (Adler).*

3. *The government funding of separate religious schools but not other religious schools or the funding of public secular schools but not private religious schools does not violate section 15(1) of the* Charter *[equal benefit under the law]. Section 29 of the* Charter *explicitly exempts separate schools from* Charter *challenge. Since section 93 of the* Constitution Act *(1867) requires funding of separate schools that is fair and equitable in comparison to public schools, public schools are also an integral part of the Confederation compromise and also exempt from* Charter *attack (Adler).*
4. *There are no public school rights that are constitutionally entrenched by law or convention. It is the province's plenary power to legislate with regard to public schools under section 93 that is constitutionally entrenched (Adler, PSBAA, Bill 160).*
5. *A province could, if it chose, pass legislation extending funding to denominational schools other than separate schools without infringing on the rights guaranteed to separate schools. However, a province is under no obligation to fund such schools (Adler).*
6. *A provincial government may amend its system of separate schools as protected under section 93(1) of the* Constitution Act *(1867) or do away with it altogether under the constitutional amending formula provided in section 43, Part V, of the* Constitution Act *(1982) (Hogan).*
7. *A provincial government is free to fund its own campaign of advocacy for its own proposed policies (Hogan).*
8. *The standard of whether there is discrimination under section 17(2) of the* Alberta Act *(1905) is fairness and not differential treatment. Different treatment between public and separate boards arising from the operation of section 17(1) separate school rights should not be used as a basis to apply section 17(2) rights (PSBAA).*
9. *Alberta's separate school boards are able to opt out of the ASFF and collect a portion of their funding directly from their local ratepayers. Alberta's public school boards cannot opt out but, in turn, get a larger portion of the ASFF than separate boards. This situation does not discriminate between the separate and public jurisdictions (PSBAA).*
10. *The purpose behind the guarantee in section 17(2) of the* Alberta Act *is the achievement of a system of education that distributes provincial monies fairly. The*

scheme "as a whole," including other sources of revenue like requisition funding, can be taken into account in determining what is fair (PSBAA).

11. *Section 93(1) of the* Constitution Act *(1867) protects only the denominational aspects of education as well as those non-denominational aspects necessary to deliver the denominational elements (Bill 160).*
12. *Placing spending restrictions on both public and separate school jurisdictions equally does not interfere with the denomination rights of separate jurisdictions. Such restraints affect only secular aspects of education such as class-size, teacher preparation time, and salaries (Bill 160).*
13. *Legislation authorizing the Minister to investigate the financial affairs of a school board, to give any directions to the board the Minister considers advisable, or to take over the financial control of a school board for a specified period of time if evidence is found of financial default or probable financial default, of a deficit or probable deficit, or of serious financial mismanagement does not interfere with the rights of separate school jurisdictions protected by section 93(1) provided that the Minister does not interfere with the denominational aspects of a separate jurisdiction (Bill 160).*
14. *The authority of separate school jurisdictions to tax supporters is not a right or privilege protected by section 93(1) as a denominational aspect of education. Section 93(1) protects the right to funding for a denominational education system that is equivalent to the public education system but not the specific mechanism through which that funding is delivered. The animating principle is equality of educational opportunity (Bill 160).*

Conclusion

Three of the five court cases summarized in this chapter reinforce the fact that there are no particular elements of the design of the public school system that are constitutionally protected. Protected separate school rights create no mirror equality rights for public schools. All school boards are delegates of the province's plenary power under section 93 of the *Constitution Act* (1867) to legislate regarding education, subject only to the protection of the denominational aspects of education for separate school jurisdictions under section 93(1).

Three of these five cases significantly update our understanding of the scope of separate school rights in Alberta. The standard to be used to determine the constitutional requirement for no discrimination between public and separate schools under section 17(2) of the *Alberta Act* (1905) is fairness and not differential treatment. The system of education funding, the scheme "as a whole," is to be taken into account when determining financial fairness, including sources of funding not coming directly from the province such as local requisitions and educational development charges.

It is the broader purpose of any rights and privileges that separate schools had by law at the time the province joined Confederation that is protected rather than a rigid reading of that law. The province is free to use its plenary power under section 93 to alter its education system. Only the denominational aspects of separate schools are protected under section 93(1). This means changing the secular aspects of a province's education system does not violate separate school rights. Spending restrictions and the right to tax supporters are secular aspects of education, not denominational aspects. The spending restrictions under Alberta's Funding Framework are as applicable to separate jurisdictions as to public jurisdictions. Allowing Alberta's separate jurisdictions to opt out of the ASFF and collect property taxes directly from their supporters is not a constitutional requirement. Funding for a separate system that is equivalent to the public system is protected, but not the specific mechanism through which that funding is provided.

The province may change the denominational aspects of its separate school system or even do away with its separate school system altogether using the bilateral amending formula contained in section 43, Part V, of the *Constitution Act* (1982). The Provinces of Quebec and Newfoundland have eliminated their denominational school systems in this way leaving only Ontario, Saskatchewan, and Alberta with separate school systems.

CHAPTER ELEVEN

ISSUES OF BOUNDARY EXPANSION: AGREEMENT *and* DISCORD

Introduction

In 1993, Alberta Education became part of an earnest effort to change the process by which separate school jurisdictions are expanded. After more than a decade of effort involving extensive negotiations, alternative proposals, changes to legislation and pending litigation, Alberta is left with only the same archaic process that has functioned for over a century. This attempt at change is an intriguing case study in the challenges of working with divergent interest groups in an attempt to achieve an alternative method of exercising constitutionally protected minority rights. An outline of the tribulations and political machinations over the evolving issues and attempts at change is contained in this chapter and the next chapter. This account will hopefully form a useful reference base for advocates considering future change.

There was no clear evidence that those involved in this attempt at change used any specific decision-making models or theories. Therefore my data were not analyzed from those perspectives.

As initially prescribed in section 11 of the *North-West Territories Act* (1875) and carried forward in section 41 of the *School Ordinance*, North-West Territories (1901), separate school education is extended to separate school electors in Alberta, either Protestant or Roman Catholic, one public district at a time. Section 200 of the *School Act* (1988) and section 213 of the *School Act* (2000) contain the same provision. In Alberta, those separate school electors have usually been Roman Catholic. Public school districts are usually about four or five miles square and have often been referred to as *four-by-fours*. This traditional process of long standing includes a vote of separate electors in the district. The majority of those minority electors who participate in that vote bind all of the minority to either establish or not establish a separate district.

Existing separate school jurisdictions have been expanded by forming new separate districts in adjacent public districts and adding those to the parent separate district by amalgamation. In public districts where Catholics were in the majority, Catholic electors were not eligible to form a separate district. The adjacent separate jurisdiction found itself educating nearby Catholic students who were part of their Catholic community but not their residents and for whom they could not receive requisition revenue or a share of undeclared corporate or electric power and pipeline tax revenue. Such a separate jurisdiction was also at a disadvantage in its Equity Grant, which was based on resident students and the geographic area of the district. Some public districts contained significant corporate assessment but did not have the minimum three separate electors resident in the district needed to petition for the establishment of a separate district. Some separate jurisdictions would occasionally orchestrate the relocation of the minimum number of Catholic electors into a public district in order to be in a position to establish a separate district and access a share of that significant corporate assessment. The traditional process for expanding separate school jurisdictions was tedious at best and often seen as divisive in the community and a source of diminished relations with local public school divisions and counties.

Initial Attempts at Change

It is noted that references to the meetings discussed in this and the next chapter, the dates, participants, statements by participants, and outcomes are from this researcher's personal notes as a representative in attendance on behalf of Alberta Education and Alberta Learning. Whenever individual quotations are taken from those personal notes, the reference notation (pn) appears at the end of the quotation. Clearly, these are quotations are from my notes and perfection may have eluded my ardent attempt to record precisely what was said in all cases.

In June 1984, a study prepared by the Finance and Administration Division of Alberta Education entitled *The Fragmentation and Amalgamation of School Jurisdictions in Alberta* noted that organizers for the establishment of separate districts had begun to request that two or more public districts be amalgamated first to enable the establishment of a separate district larger than a single public district. This was only done at this time with the concurrence of the public school jurisdiction, which was not always forthcoming. The study discussed the appropriateness of a change in legislation to allow the establishment of separate school systems in larger jurisdictional units. To enable a more appropriate formation process, the study recommended "that the petition requirements be based on the minority rights of the Roman Catholics or Protestants within a total public school system giving them the right of petition regardless of local areas of majority" (Alberta Education, 1984b: p. 21). However, no further action was taken on the concept of allowing the establishment of separate districts in areas larger than the traditional four-by-four public district.

The *School Amendment Act* (1992), Bill 41, had been tabled in the Legislature in June 1992, as reviewed in Chapter Nine, and had introduced the concept of regionalization. An October 1992 study and report prepared for the Alberta Catholic School Trustees' Association (ACSTA) entitled *Changing Boundaries of Catholic School Districts* contained the following:

> It was obvious that the small size restrictions placed on the districts as a result of the 16 sq. mi. stipulation was a major source of difficulty in many areas of the province and didn't at all match the attendance area from which many Catholic schools drew their enrolment. Requests for alterations to the strictures placed on Catholic school district size became frequent and consistent from the early 1960's on. In the 10 years from 1963 to 1973 the matter of separate school district boundaries was raised a total of 8 times in briefs to government…
>
> During the past 20 years the Alberta Catholic School Trustees' Association has consistently raised the same issue in its communications with government and with the various Ministers of Education. It is recognized that the small, rural Catholic school district is in serious financial, and at times educational difficulty (Duke and Peters, 1992: pp. 7, 8).

The study included a survey of separate jurisdiction trustees, central officer personnel, and clergy. The large majority of respondents felt there was a need for boundary changes in the Catholic school system and more than half of those respondents favoured a system of coterminous boundaries with the public school jurisdictions. The study provided major cautions however. Separate jurisdictions coterminous with school divisions and counties could cover large, sparsely populated areas resulting in increased costs to both the Catholic and public boards and adversely affecting relations between Catholic and public boards. The final recommendations stressed the concept of functional, optimal size for separate jurisdictions.

> Any enabling legislation with respect to regionalization of school districts must first recognize the need for many Catholic school districts to achieve a local optimal size through "coterminous" boundaries with attendance area, parish area,

> or public district(s). Local optimal size is a precondition to consideration of regionalization (Duke and Peters, 1992: p. 51).

On January 5, 1993, a group of senior officials from the ACSTA and Alberta Education met for a colloquium to review and discuss the contents of the report. A consensus was reached on the merits of redefining public district boundaries around public attendance areas, as was done by legislation in Saskatchewan in 1978 and discussed in the *St. Walburg Case* (1987), Chapter Five. Instead of a school division or county being made up of about 80 public districts, each might have five or six. This would allow separate electors in a community or service area as a whole to address the merits of a separate district instead of one historic four-by-four at a time. However, in a follow-up letter from the Deputy Minister of Education to the Executive Director of ACSTA dated January 27, 1993, the ACSTA's desire to move forward on realignment of public districts was used as a leverage to attempt to build consensus for what the Department considered a larger challenge, a solution to fiscal equity.

> ...I believe strongly that little real progress can be made on many boundary issues until a solution to fiscal equity is implemented as this is the greatest inhibitor to boundary changes...Where there is consensus among the local public and separate jurisdictions concerned, the boundaries of public districts within a division or county will be changed. However, it would be unacceptable to impose a realignment of current "4x4" district boundaries prior to a solution to fiscal equity.

On June 10, 1993, officials from ACSTA, Public School Boards' Association (PSBAA), and Alberta Education met to examine alternatives to the establishment of separate school districts on the basis of the old four-by-fours. The meeting had been arranged by Alberta Education at the request of David King, Executive Director of PSBAA. It was agreed that two alternatives would be developed for the purpose of discussion and debate. This researcher, in my capacity as an Alberta Education official, would develop an alternative based on coterminality with public attendance areas and David King would prepare an alternative based on coterminality with public jurisdictions.

By October 1993, Alberta Education, with the support of ACSTA, was ready to move forward on a significant change. All public school districts that were part of a consolidated school district, school division or county for school purposes, and in which a coterminous separate district did not already exist, would be dissolved. The lands in the dissolved public districts would be re-established into public districts coterminous with the public elementary student attendance areas. This would address the ACSTA's concern that separate districts could not be formed in some public districts where there was either not the minimum number of Catholic separate electors or there was a Catholic majority. It was also seen as addressing the concern of the PSBAA that some separate districts seemed to pick out the easy-to-serve or high assessment districts for establishment while avoiding the more sparsely populated, higher cost areas, a process referred to as *cherry-picking*.

Alberta Education had maintained a long-standing practice that non-contiguous, fragmented separate districts would not be amalgamated. This was intended to discourage separate electors from forming fragmented separate districts, as they had to be managed as autonomous boards. When amalgamation was imposed on the districts that did not operate at least one school on August 31, 1993, fragmented separate districts were amalgamated. Alberta Education moved to a practice that thereafter amalgamation would be imposed on newly formed *non-operating* separate districts. This created further concern that there was now an even greater risk of cherry-picking in the establishment of new separate districts, which provided incentive for Alberta Education to move forward on realigning the public districts. Also, by October 1993, Alberta Education had been advised of the intent to form 81 new separate districts: 31 in East Smoky Division, 16 in County of Ponoka, 11 in Rocky View Division, 10 in Foothills School Division, 10 in County of Parkland and one each in Peace River, Provost and Wainwright Divisions. This was seen as an administratively demanding and extensive process and provided additional incentive to move forward with the realignment. It was noted that the 31 districts in East Smoky Division represented only two elementary student attendance areas and just two potential public districts under the proposed realignment.

On October 5, 1993, David King, Executive Director of PSBAA, submitted to ACSTA and Alberta Education his promised proposal for an alternative model for the establishment of separate school jurisdictions based on coterminality with public jurisdictions. The proposal included acknowledging the Roman Catholic faith as the religious minority faith throughout Alberta as a whole. All existing Roman Catholic jurisdictions, including those that were public, would become separate jurisdictions. All existing Protestant separate jurisdictions would become public jurisdictions. All rural public districts within each school division and county and in which a separate district did not already exist would be amalgamated into a single public district. The result would be that any further establishment of rural separate districts by vote of separate electors would result in a single separate jurisdiction within the boundaries of any school division or county and coterminous with that public jurisdiction. This was the model used in the former Bonnyville School Division in 1980 to create the coterminous Lakeland public and separate districts when the Executive Director of PSBAA was Minister of Education. This would stop cherry-picking and force separate districts to be responsible for their residents in the whole of a school division or county as was their public counterpart. Attendance boundaries for separate schools would have to be agreed to by both separate and public boards. If the separate district was not able to provide school services to all of their residents in the school division or county directly, then they would serve in an advocacy role and enter into tuition agreements with the public jurisdiction for those services as was done in Lakeland. Members of the religious minority should have the option of choosing to support the public school system [the Ontario model]. In a terse letter of response dated October 7, 1993, the Executive Director of ACSTA firmly dismissed the PSBAA proposal "as an entire political agenda."

By January 1994, the Government's Priorities and Agenda Committee had blessed the proposed realignment of the public districts to be coterminous with public elementary attendance areas and an appropriate Government news release officially announcing the change was eminent. But the ACSTA reacted so negatively to the announcements on January 17 and 18 that all property taxes would be pooled by the province, effectively removing the right of separate districts to directly tax their supporters, and that regionalization would be imposed on school boards after August 31, 1994, that senior government officials withdrew the initiative to realign public districts. The logic was that if separate boards were going to fight the government on legislation that would finally put them on financial par with public jurisdictions, then the government was not going to make it easier for them to establish separate districts.

On October 13, 1994, imposed regionalizations were announced by the Minister of Education, Halvor Jonson, to take effect January 1, 1995. The ACSTA commenced legal action on December 12, 1994, opposing the forced regionalizations of separate jurisdictions. While the action never went to trial, negotiations to reduce the number of separate districts to the target of 16 would not be concluded until February 1998.

The Deputy Minister received a letter dated April 30, 1997, from the ACSTA Committee on the Formation of Separate School Districts. The letter proposed that, at the request of the closest Catholic school jurisdiction, the Minister amalgamate certain public districts within a public jurisdiction into a single public district to enable the establishment of a separate district within the attendance area of an existing Catholic school or in an area where a Catholic school could be started. I was appointed to meet with the Committee Chair and the Executive Director of ACSTA to discuss alternatives. That meeting took place on October 27, 1997. In short, Alberta Education was not yet prepared to leave the selection of the public districts to be amalgamated to the discretion of the nearest separate jurisdiction preferring a consistent structure to the realignment of public districts. The ACSTA was no longer supportive of coterminality with public elementary attendance areas. Public jurisdictions generally had rural schools in more small communities than would be viable for the separate jurisdiction. Consequently, functional attendance areas for separate rural schools were generally larger than their public counterparts. Being forced to take in the entire adjoining public attendance area in order to optimize a separate school attendance area was not workable and would disenfranchise portions of a functional Catholic attendance area.

On November 18, 1997, David King shared with Alberta Education *the PSBAA Provisional Position Paper, Public and Separate Schools (November 1997)*. In part, it stated:

> The defining and unique characteristic of public school education is that it is inclusive…The Public School Boards' Association of Alberta exists to advocate the benefits of inclusiveness…Wherever the establishment of a new separate school district is proposed the PSBAA will be an advocate, to all Albertans, of the all-inclusive public school system…The right (of the dissentient religious minority to choose to establish a separate school system) is assured by the Constitution…It is open to the people of Alberta at any time to consider amendments to the Constitution…It is the position of the Public School Boards' Association of Alberta that no amendment affecting the rights of the dissentient religious minority should be enacted unless the principle of the amendment is approved by a double majority of the people of Alberta, a majority of the

> dissentient religious minority and a majority of Albertans other than those who are of the dissentient religious minority.

The PSBAA appeared to have drawn a couple of interesting lines in the proverbial sand that could be expected to create less than enthusiasm among the ranks of ACSTA. PSBAA would actively advocate against future proposed separate district formations, espousing instead the merits of the all-inclusive public system. PSBAA pointed out that the Constitution that assures separate school rights to the religious minority can be changed by the people of Alberta. But no amendment to the minority religious education rights should be enacted without the approval of both the majority of the religious minority impacted and the majority of all other Albertans. Such a position would effectively place the fate of any future changes to the structure of Alberta's minority religious education rights in the hands of the majority.

A New Vision

On February 4, 1999, the ACSTA presented a document to the Minister of Education, Gary Mar, entitled *A New Vision for the Formation of Catholic Separate School Districts in Alberta*. The ACSTA proposed to expand the boundaries of its 16 Catholic school jurisdictions, including St. Albert Public, to include all geographic areas of the province currently covered by the public jurisdictions. The stated primary purpose for ACSTA making its proposal was to change the perspective of public boards so that Catholic separate school services may be extended into new areas of the province without the objections and machinations of some public boards and individuals. The divisiveness within the community frequently associated with the current process of conducting a vote of minority Catholic electors would be avoided.

The ACSTA also wished to overcome the apparent lack of effort on the part of some separate boards to actively promote separate school access beyond existing boundaries. The proposal would essentially force 16 Catholic boards to assume responsibility for providing educational services to Catholic students in 16 enormous areas of Alberta, much of it sparsely populated. Issues of distance learning, home schooling, use of the Internet for instruction, and bussing would need to be addressed by the boards.

On March 24, 1999, Minister Mar advised ACSTA that their proposal would likely require a constitutional amendment. Section 210 of the *School Act* (1988), like section 48 of the *School Ordinance* (1901), did authorize the Minster to add lands to "any district" without distinguishing between public or separate districts. But Alberta Justice was concerned that the general provisions of those sections were not intended to override the specific provision for a vote of separate electors. Imposing separate education on separate electors without benefit of the voting process protected by the *Constitution* was a major concern. Municipal Associations were expected to voice concern if all 360 municipalities were suddenly forced by the government to become part of the property tax declaration process, up from the 120 municipalities involved within the then current boundaries of the 16 separate boards. The issue of imposing education tax collection obligations on municipalities without provision for reimbursement of costs had been a traditional matter of contention.

In October 1999, the ACSTA reintroduced their *New Vision* proposal to the new Minister of Learning, Dr. Lyle Oberg, appointed in May 1999. Minister Oberg initially played the constitutional concern card, but in December 1999 the Minister met with the Presidents of the three school trustee associations, the Alberta School Boards' Association (ASBA), of which all Alberta school boards are members, the ACSTA, and the PSBAA. The Minister requested the three associations to work toward a consensus position. The Minister would give serious consideration to implementing a proposal on which the three associations could agree, provided it did not require a constitutional amendment to the *Alberta Act* (1905). "Without ongoing reflection and dialogue it is likely that those in power will continue to replicate the status quo" (Carasco, Clair, and Kanyike, 2001: p. 275).

The expectation that the three trustee associations would be able to agree on a proposal may have been optimistic. Perhaps the Minister did not really expect stakeholders with such divergent viewpoints to succeed in reaching agreement, but saw challenging them in this way as a more positive response than saying it wasn't doable. But Minister Oberg had none-the-less offered a substantive opportunity. When multiple stakeholders cannot agree, government traditionally either does nothing or does whatever it wants. However, government is potentially prepared to make dramatic change to accommodate those rare occasions when stakeholders can actually agree on what they want, as long as it isn't more money.

Negotiations Begin

The Executive Directors of the three trustee associations entered into negotiations, for which this researcher served as facilitator on behalf of Alberta Learning. All references to statements by individuals are from my personal notes from those various meetings and referenced as (pn). Initial meetings were held on January 11 and 21, 2000. On January 31, 2000, the Executive Directors met with the Deputy Minister of Learning and reached agreement on two possible alternatives for the implementation of expanded boundaries for Catholic school jurisdictions referred to as the *Joint Proposal, 2000.*

> Alternative No. 1: Adopt the ACSTA proposal to expand the Catholic school jurisdictions boundaries across the province, with the specific additions of:
> - The choice of Roman Catholics in Alberta to remain residents, electors, and ratepayers of the public jurisdiction, and
> - A province-wide disputes-resolution mechanism to support local public and Catholic school jurisdictions.

Alberta Justice had advised Alberta Education that, if the right of the majority of the minority to decide for all of the minority through a vote of separate electors was to be replaced, it was critical to introduce individual choice for separate electors as a means of maintaining a form of the constitutional right of choice for separate electors. This move to individual choice for separate electors would need to apply to both existing separate jurisdictions as well as the expanded areas. Having different rules of residence for different areas of the province would simply be unworkable for tax declarations and elections, as well as raise a *Charter* issue under section 15 if some Catholics were treated differently under the law than other Catholics.

The second alternative was the same as the first except that the *School Act* would be amended to "confine the rules for residence, electors, and property taxes for separate boards to attendance areas set by the by-law of a separate board" under section 8. This amendment would at least remove the responsibility for the decision to expand separate education services from the Minister. It would place the decision for the pace of service expansion in the hands of the local separate board rather than impose instant responsibility for extensive new areas.

The Presidents of the three associations signed a joint *Communiqué* dated January 31, 2000, for public release. It stated in part:

> Discussions were positive, however, concerns, special situations and anomalies were identified. The group is committed to continuing to work together to develop a solution that is acceptable to school boards, is legally sound, and is in the best interests of all children. Consultation with boards will be an important part of our process. Once we have developed options on how this issue can be addressed we will ensure this proposal is widely circulated to school boards for feedback and input. In the meantime, we have agreed, that to the extent possible, we will use our good offices to request that any new four by four formation votes be put on hold.

A Diversity of Legal Opinion

On February 9, 2000, the legal counsels for the three trustee associations met to review the *Joint Proposal* to expand Catholic school jurisdiction boundaries developed by the three Executive Directors. In the resulting *Report of Legal Counsel*, it was noted that Counsel had agreed that section 48 of the *School Ordinance* (1901) provided a two-point test for the Minister adding land to the boundaries of separate school jurisdictions: 1) "the rights of ratepayers under s. 14 of the North-West Territories Act…will not be prejudiced" and 2) "the proposed changes are for the general advantage of those concerned." Counsel agreed that, if the boundaries of separate school jurisdictions were expanded, the most pressing remaining issues would be, first, whether resident students of the separate school jurisdiction would be entitled to attend public schools. If parents become residents of an expanded separate jurisdiction but continue to send their students to public schools where Catholic schools are not available, would those parents be disenfranchised from voting and running for the public school board. Counsel agreed that it would not be permissible for a disputes-resolution mechanism to determine the constitutional rights of electors, but such a mechanism would be acceptable and advantageous with respect to other issues. Beyond these points, there was a diversity of legal opinion.

Counsel for PSBAA placed primary focus on the *Schmidt Case* (1976) wherein the Alberta Court of Appeal had upheld the right of the majority of the minority of separate electors to compel all of the minority, through the voting process, to become residents and supporters of the separate district. Counsel stated that failure to proceed on a district-by-district basis, with full involvement of Roman Catholic or Protestant minorities in each district, would violate their rights including the right to decide *against* establishing a separate school district.

Counsel for ASBA expressed two potential constitutional concerns. The first relates to the inherent presumption in the proposal that the minority within every public district, where no current separate district exists, would be Roman Catholic. It could occasionally be Protestant. The second concern is that the protected minority rights leave it up to the minority electors to decide if they wish to establish a separate district. It is not the prerogative of the provincial government, or the church, or an existing board, or an association acting on behalf of the minority electors.

Counsel for the ACSTA said that the use of section 210 of the *School Act* (1988) by the Minister to expand separate jurisdictions did not raise constitutional issues, provided that the Minister met the two-pronged test in section 48 of the *School Ordinance* (1901). It was the ACSTA Counsel's opinion that the ACSTA's *New Vision* proposal did not offend the test of section 48 and that a vote of separate electors would not be necessary.

At a subsequent meeting of the Executive Directors for the three trustee associations with the Deputy Minister on February 17, 2000, the Executive Director of PSBAA stressed that amendments to the *School Act* may not be sufficient to give Catholics individual choice because of the findings of the *Schmidt Case*. PSBAA proposed that, in order to overcome the *Schmidt Case*, a direct reference to the Supreme Court of Canada be made on the constitutionality of the proposed amendments. "If we get the answer we want, then none of us have a concern" (pn). ACSTA, ASBA and the Ministry did not support the necessity for a reference to the Supreme Court. ACSTA was particularly averse to approaching the courts on the constitutionality of separate school rights. The Executive Director for ASBA summed up the position opposed to a Supreme Court reference stating that "this is a political issue, not a legal one. We should endeavor to solve the practical political issues. A judicial reference is not necessary if we all support the principle of choice" (pn). This is an important concept in understanding the dynamics of changing the way separate districts are established. Bringing together diverse political positions is the greatest challenge. "Every time an individual or group tries either to change or maintain the existing order, politics is involved; this process is part of the fabric of democracy" (Young and Levin, 1998: p. 62).

The Executive Directors continued to meet on February 23 and 25, 2000, followed by a meeting with the association Presidents on February 26 at which the Executive Directors presented for discussion an additional alternative referred to as an *Enhanced Option 2*:

> Adopt the ACSTA proposal to expand the Catholic school jurisdiction boundaries across the province by amending the School Act to empower the Minister to establish any portion of Alberta as a Roman Catholic Education Region. There would be a maximum of one Catholic board per region. The actual legal boundaries of the Catholic jurisdiction would remain unchanged until the Catholic board passed by-laws to expand them within the relevant Education Region. When such by-laws were appropriately passed, the Minister would confirm the expanded legal boundaries of the Catholic jurisdiction by Ministerial Order.

This option continued to include individual choice for minority electors in Alberta and a province-wide binding disputes-resolution mechanism. A by-law to expand the legal boundaries of a separate jurisdiction must be passed not later than December 31 to be effective the following September 1. This last point would provide public boards with a minimum of eight months and a maximum of twenty months notice for the extension of separate board boundaries. This was a critical bargaining point for public boards since it would prevent the expansion of a separate jurisdiction, with its consequent loss of students from the public system, after the budget cycle for the coming school year was completed between January and April. Also, before introduction, the by-law must be discussed with the corresponding public jurisdiction.

Enhanced Option 2 also provided that all Roman Catholic Education Regions would be coterminous with the boundaries of one or more public jurisdictions. Although many separate boards would continue to operate within a plurality of public jurisdictions, this point would give each public board a single separate board with which to work, which public boards hoped would provide opportunity for enhanced dialogue and cooperation. In one instance, a public jurisdiction, Black Gold Regional Division, had three Catholic separate jurisdictions within its boundaries: Elk Island, Evergreen, and St.

Thomas Aquinas. The Executive Directors of ASBA and PSBAA preferred *Enhanced Option 2*, while the Executive Director of ACSTA continued to prefer *Alternative No. 1*.

On March 3, 2000, the three Executive Directors met with three senior lawyers from Alberta Justice followed that same day by a meeting with the Presidents of the three associations. Alberta Justice strongly advised against removing the current provisions of the *School Act* for the establishment of a separate district by separate electors, whether Protestant or Roman Catholic. Since there is no intent to amend the *Alberta Act*, this would put us on a much stronger ground constitutionally. The alternative provision to establish Roman Catholic Education Regions would be added to the *School Act*. To the extent that the new process limited the probability that the old establishment process would ever be used again, so be it, but Roman Catholics cannot be made the sole relevant minority by opening the *School Act* only. The right of the Protestant minority to potentially establish a separate district in a public district into which the Roman Catholic Separate District had not yet expanded would be preserved.

Alberta Justice also stressed the critical significance of the individual choice for minority electors. The traditional group right was primarily based on the funding structure of the day, but Alberta's separate jurisdictions are no longer dependent on the local tax base. Provincial legislation cannot make constitutionally protected rights more restrictive, but there is no prohibition against making them less restrictive. The individual choice of separate electors to choose between the separate and public jurisdictions was considered potentially a higher level, less restrictive level of choice than the collective choice of the majority of the minority under the traditional process. In this way, the right of the minority electors to choose is preserved even though they had no direct say in the decision to include their geographic area in a separate jurisdiction. There is also strong legislative precedence for reference to *individual* separate electors. Section 27 of the *School Act* (1988) provided that an *individual* who is of the same faith as those who established the separate district is a resident of the separate district, while section 132 provided that the property of such an *individual* is assessable for the separate district. Alberta Justice was of the opinion that an alternate process for extending separate jurisdiction boundaries based on individual choice of separate electors had a reasonable chance of withstanding any future constitutional challenge. It was noted that the coterminality of the Roman Catholic Separate Regions with one or more public jurisdictions would be a contemporary parallel to the historic provision that separate districts were coterminous with public districts.

Discussed was the issue of giving separate electors within the area of existing separate jurisdictions an individual choice to be a resident, ratepayer, and elector of the public or separate system when those separate electors had already chosen by vote of the majority of the minority under the traditional process. The constitutionality of that change would be enhanced if it were done with the permission of those separate electors. Obtaining resolutions supporting the proposal from the separate boards as the chosen representatives of those separate electors was seen as the appropriate method of achieving that. Alberta Justice suggested that letters of affirmative support from Alberta's Catholic Bishops would also be well advised. The Executive Director of ACSTA noted that meetings with individual Bishops had been initiated.

At the following meeting that same day with the three associations Presidents and three Executive Directors, it was clear that there was still some distance between the positions of the three associations. All parties were agreed on the principle that individual Roman Catholics would have the choice of remaining residents, ratepayers, and electors of the public jurisdiction. But the President of ACSTA still wanted the boundaries of the existing Catholic jurisdictions to expand to the full reaches of the new regions in one step and on a fixed date, at least by September 2000. ASBA and PSBAA wanted the legal boundaries to be expanded by the Catholic boards by by-law. Catholic boards would be free to pass a single by-law to take in the whole region or to pass a series of by-laws over time. The ASBA President voiced a belief that not all Catholic boards supported instant expansion to regional boundaries that blanket the province while the ACSTA President insisted there was unanimous support of all Catholic boards for the single step. It was pointed out to the ACSTA President that if indeed there was that unanimous support for the single step expansion, Catholic separate boards would not have any trouble passing a by-law to assume that responsibility. The critical difference was that it would be a local board decision, not one imposed by the Minister.

The President of ACSTA was very reluctant to have a disputes-resolution mechanism that is binding. ASBA and PSBAA believed that such a mechanism must be binding or it is of no value. If it were binding, it would encourage boards to solve problems together and avoid the binding mechanism. ASBA and PSBAA wanted it to be a requirement that the Roman Catholic Education Regions be coterminous with one or more public jurisdictions, even if the establishment of some regions had to wait until the relevant existing separate boards successfully negotiated between them a solution which met that requirement.

ASBA and PSBAA wanted to remove from section 28(3) of the *School Act* (1988), that requires all boards to enroll non-resident students at the request of the parent, the qualification "if, in the opinion of the board asked to enroll the student, there are sufficient resources and facilities to accommodate the student." If Catholics would be able to choose to remain residents of the public jurisdiction, public jurisdictions would in fact be required to take all students through the door, non-Catholic or Catholic, while the qualification would still be available to separate jurisdictions. Since under the existing section Catholic separate boards must take the next Catholic student through the door just as public boards must take the next non-Catholic through the door, it was not considered much of a leap to simply say that both the separate and public boards must take the next student through the door regardless of faith. The President of ACSTA strongly denied the suggestion that some separate boards had used section 28(3) to deny service to non-resident students who were high-cost, special needs students or problem students. Also, removing the limitations of section 28(3) would be particularly problematic for boards like Calgary Separate who were experiencing rapid growth.

The associations expressed a desire to reach consensus on a single proposal and recognized the time had come to move away from statements of more than one option. The Presidents of ASBA and PSBAA both asked the President of ACSTA to strongly consider moving her position on the issues of local autonomy in moving boundaries, timing, binding disputes resolution, coterminality, and removing the limitations in section 28(3).

The Presidents' Proposal

On Monday, March 6, 2000, the Presidents and Executive Directors of the three associations with Alberta Learning reached consensus on what was initially referred to as *the Monday Proposal.* On Friday, March 10, *the Presidents' Proposal* was presented in Edmonton by the three Presidents to a joint meeting of Chairs and Superintendents from each of Alberta's school boards. Minister Oberg launched the session by encouraging the boards to support *the Presidents' Proposal*, noting that time was of the essence for the Spring 2000 session of the Legislature. *The President' Proposal* was essentially *Enhanced Option 2*:

> Amend the School Act to implement the ACSTA proposal to expand the Catholic separate jurisdiction boundaries across the province, in the following way:
> 1. The Minister will establish sixteen Catholic separate school regions by Ministerial Order, covering all areas of Alberta.
> 2. There will be one Catholic separate board within each region.
> 3. The board of the Catholic separate school jurisdiction will have exclusive authority to extend its service area (i.e. legal boundaries) by board resolution.

Explanatory notes included:

1. There would be an option for Catholics in Alberta to choose to be residents, electors, and ratepayers of the public jurisdiction or the Catholic jurisdiction.
2. A parent of a non-resident student who is refused service under section 28(3) could appeal the decision to the Minister.
3. Catholic schools would still require that students, and their parents, accept that children attending their schools will be educated in an atmosphere permeated by Catholic faith.
4. There would be a disputes resolution process to support local resolution of administrative [not constitutional] issues. If unsuccessful, either board involved in a dispute could trigger a process of binding arbitration.
5. The expansion of service within the new region (i.e. legal boundaries) will take place in response to the Catholic community and by resolution of the separate board by December 31, to be effective September 1 of the following year. Before the introduction of each resolution notification of the affected public boards(s) will be required.
6. Separate school regions would be coterminous with the boundaries of one or more public jurisdictions.

Three special cases were noted. The Catholic board in St. Albert is a public board. St. Paul Regional School Division is comprised of a public Catholic district, a Protestant Separate District, and two counties. Those two jurisdictions along with Northland School Division, which is governed in part by its own *Act*, were excluded from the proposal. In a *Communiqué* for public release it was stated that board representatives were requested to take the proposal back to their communities and return to a meeting in April to see if consensus can be reached.

The Reaction

The Edmonton Journal for March 11, 2000, attributed the following to Minister Oberg:

> Learning Minister Lyle Oberg strongly endorsed the plan Friday, saying it will give every parent in Alberta the chance to choose whether to belong to a Catholic or public school district, because every region will be served by both systems…Oberg and the presidents would like to see the necessary changes to the School Act introduced during this session of the legislature (Unland, 2000, March 11).

The Minister's comments that the plan will give every parent the choice "to belong to a Catholic or public school district" are somewhat misleading. Parents in Alberta may choose to enroll their students in either the public or separate system. But choice of residency under the plan would only be extended to separate electors, consistent with the traditional process that provides a choice only to separate electors.

> "If this problem is ever going to be resolved, it will be resolved now because we will never, ever have an opportunity like this," said Lois Burke-Gaffney, president of the Alberta Catholic School Trustees Association…the new system will ensure increased communication between public and Catholic boards, said Lois Byers, president of the Alberta School Boards Association. "In the previous process, that wasn't a step at all" (Unland, 2000, March 11).

The next day on March 12, 2000, the Calgary Herald reported this very positive endorsement of the proposal:

> "This proposal signals the beginning of a new partnership between Alberta's Catholics and public schools," said Don Fleming, president of the Public School Board [sic] Association of Alberta. "It is a clear demonstration of our commitment to work together for the benefit of the children and the communities we serve" (Knapp, 2000, March 12).

Regrettably, that was PSBAA's last attempt at supporting the initiative. "Wise decision makers realize that explicit goals often crystallize conflict and opposition" (Weimer and Vining, 1999: p. 266).

On March 20 and April 3, 2000, ASBA sent to all board Chairs summary documents addressing process and next steps. Notice was included for a follow-up meeting called for April 14 at which boards would be asked to vote on whether the proposal should proceed through the then current Spring Session of the Legislature.

Given the importance of this issue, the ASBA Board of Directors requested a two-thirds majority of those voting, for the vote to be considered as the direction of the ASBA membership. A letter from the ASBA President dated April 3 to all board chairs stressed the importance of bringing the legislation forward in the 2000 Spring Session of the Legislature. A Fall Session was not expected and a provincial election was expected in the spring of 2001.

> If we do not proceed with the proposal at this time the political opportunity that presents itself will not likely be there in six months so we need to decide one way or the other now. An October timeline…may cause a delay of up to two years. There may not be the will on the part of the provincial government to entertain this question in 2002. In addition, a new Minister may well be in place who has other priorities so…a simple clear question with a yes or no response is best.

ASBA hosted information workshops for board Chairs and Superintendents on April 3 and 4, 2000. On April 7, 2000, the Presidents and Executive Directors of the three associations met with this Alberta Learning facilitator. ASBA and ACSTA came prepared to discuss ways of enhancing or improving the proposal to address concerns. PSBAA would have none of it. The President of PSBAA noted that "we do not have an agreement, only some specific points. It is insufficient" (pn). PSBAA stated that they left the March 6 meeting expecting that ACSTA would address the constitutionality of the proposal. The PSBAA President stated:

> We have no resolution from ACSTA and Catholic boards attesting to their belief in the constitutionality of the proposal, no written affirmation of support from the Catholic Bishops, and no map from ACSTA showing where the separate school regions will be. We have no assurance ACSTA will uphold its end of the agreement (pn).

ASBA and ACSTA attempted to insert additions to the proposal, which addressed a statement of belief by the three associations in the constitutionality of the proposal, a statement about *where numbers warrant* relevant to rural Alberta, and a reference to the development of a communication protocol, to which there had been previous agreement. PSBAA stated they could not accept any changes to the proposal at this late time and expressed the belief that the window of opportunity had closed for that spring. The ACSTA President stated, with respect to the upcoming April 14 meeting of all boards, "if

PSBAA's intent is to force us to leave the document as it is so that they can attack it from the floor as insufficient, that is reprehensible" (pn).

PSBAA stated they did not want the process hijacked by ASBA and had scheduled a meeting of PSBAA members for April 13, the day before the planned vote of ASBA members. The letter, which the PSBAA Executive Director had sent out on March 29 containing the notice for PSBAA's April 13 pre-meeting, included the following recommendation of PSBAA's Executive Committee:

> That the Association and public school boards oppose the enactment of any legislation, in 2000, intended to enable the implementation of the so-called "Presidents' Proposal"...pending a thorough review of all the significant issues raised for public school education by the existence and operation of Catholic schools.

The President of ASBA requested clarification of this PSBAA letter of March 29 to all PSBAA member boards as to whether it was "calling into question the existence of separate districts in Alberta" (pn)? An awkward shuffle ensued that resulted in no straight answer being forthcoming.

The President of ACSTA stated that "Catholics in this province have been fighting discrimination for the past 25 years and it appears that we will need to keep on fighting" (pn). This comment about a struggle that began 25 years earlier may have been a reference to the efforts of Catholic boards in Alberta to gain a further share of undeclared corporate assessment that lead to amendments to the *School Act* in 1978 and 1979, as reviewed in the *Calgary Public Case* (1981), Chapter Two. The meeting broke up on that note and the ACSTA President left, but returned to express how much she regretted that PSBAA "has chosen to sabotage the proposal rather than work together to make it succeed" (pn). She then departed again.

On April 11, 2000, Minister Oberg sent a letter to all Alberta school board Chairs offering clarifications, including a commitment to transition funding on a case-by-case basis and new funding to support potential growth in sparcity and transporation grants in support of *the Presidents' Proposal*. The Minister also expressed support for the current number of 41 public school jurisdictions. This last point was in response to a concern that had arisen from the Chair of Sturgeon School Division that the proposal obscured a hidden agenda to further reduce the number of public jurisdictions, as had recently been done with the health and social services regions. On April 12, 2000, Minister Oberg sent a letter to the President of ACSTA with copies to the Presidents of ASBA and PSBAA. It said in part:

> Should the President's Proposal receive support from school boards, Alberta Justice has confirmed for me the documentation that is necessary for the Government of Alberta to put forward a Bill that would implement the Presidents' Proposal consistent with minority religious rights under the constitution.
>
> Of critical importance is the consent and approval from each of the existing separate boards, individually, for the change from *(a) the power of the majority of the separate electors to compel all of the separate electors through a vote to (b) the power of individual separate electors to choose to be residents, ratepayers, and electors of either the separate or the public jurisdiction.* This consent and approval of the separate boards is required in their capacity as the elected representatives of the separate electors who have already chosen to compel all of the separate electors through previous votes under the current 4X4 process.
>
> It is also highly desirable to have a similar resolution from the Alberta Catholic School Trustees' Association and a written affirmation for this change in choice for separate electors from the Catholic Bishops.

Also on April 11, 2000, the Deputy Minister met with the Executive Directors of the three associations. The Executive Director of PSBAA indicated that PSBAA had opposed further changes to *the Presidents' Proposal* on April 7 believing that, from a political perspective, changes to the document would incite confusion between two versions when the second version is distributed a few days before the scheduled vote. The PSBAA Executive Director asked if the sharing of school facilities would be open to the disputes resolution mechanism? "Public boards can say that is something we need to know the answer to before we can support the proposal" (pn). The Deputy Minister observed that the extent of sharing could not be addressed today. The ASBA Executive Director asked, "how does the proposal exacerbate the issue of sharing facilities…I'm not sure how this is an issue for the four-by-four problem" (pn)? The PSBAA Executive Director replied that "PSBAA has been consistent from the beginning that it could not agree to an alternate process without addressing some of the long-standing practical issues associated with Catholic education" (pn).

The Outcome

At the April 13, 2000 meeting of member boards of PSBAA, the last half of the resolution put forward had been modified to make it slightly more politically acceptable:

> …pending a thorough review of all the significant issues raised for public school education by the operation of separate (Catholic) schools and the expansion of (Catholic) separate school education.

It is interesting to note that the wording of the resolution had twice qualified that its reference was only to Catholic separate schools, as opposed to Protestant separate schools. This was perhaps made necessary by the fact that Alberta's only Protestant Separate jurisdiction (St. Albert) is a member of the *public* boards' association, PSBAA. The stated intention was for PSBAA to complete the substance of that review by October 2000. The President of PSBAA stressed that there had to be a constitutional amendment to the *Alberta Act* to effect the proposed change; "ACSTA did not involve us early on in their considerations, but only when asked to do so by the Minister. Now we are facing a severe time constraint that does not allow our concerns to be properly addressed" (pn). PSBAA members voted decisively supporting the resolution not to proceed with the proposal. During the discussion after the vote, the Chair of Prairie Rose Regional Division stated:

> I have great concerns about tomorrow…We have taken a preemptive strike and have said we have no desire to listen to the debate tomorrow…I am concerned that there will be adverse feeling…about PSBAA taking a corporate position today. Tomorrow may be one of the pivotal days in education in Alberta. As trustees, I don't think there will ever be a time when we do something more important than what we do tomorrow (pn).

Next day at the April 14 ASBA meeting of all boards, the ACSTA had placed maps on the wall to attest to the work that the association had done to achieve coterminality. The question that was put to the Chairs was "do you favour proceeding with the Presidents' Proposal in the current session of the Legislature, yes or no?" The result was 24 yes and 37 no. Two Catholic boards out of the 16 had voted against the proposal meaning 10 public boards had voted for it. Christ the Redeemer preferred the current four-by-four process and had been unable to accept coterminous boundaries. Elk Island Catholic was unable to accept the disputes-resolution process, claiming that it would erode Catholic rights assuming that the majority of arbitrators would be non-Catholic.

After the result of the vote was announced, a resolution arose from the floor from the Chair of Prairie Rose Regional Division, a PSBAA member board, to instruct ASBA to continue on the road to finding a solution and to call a special assembly in late October 2000 with a new proposal. This resolution was carried unanimously. It seemed that ASBA had succeeded in *hijacking* the ongoing process in spite of PSBAA's best efforts. It was agreed that the President of ASBA was to inform the media of the results of the meeting and the willingness of Alberta's school boards to carry on searching for an acceptable proposal. There would be no relevant legislation put forward in the year 2000.

An April 17, 2000, article in the Western Catholic Reporter contained the following dichotomy:

> …the proposal is too simplistic, says Dr. Frank Peters of the University of Alberta's faculty of educational policy studies. "It doesn't recognize the complexity of the issues involved" on both a constitutional and practical level, says Peters, who has written and presented extensively on Catholic education. Enfranchisement – the right to vote and run for election – is a real concern, he says. If Catholics in newly-expanded areas don't get a chance to vote on whether to be part of the separate school district, it's a disenfranchisement, and requires a constitutional change, not just a legislative one, Peters says…
>
> But former East Central superintendent Dr. George Bunz says that although enfranchisement is important, it doesn't necessarily have to happen in the same way it has in the past. The proposal specifies that Catholics living in areas which become part of an expanded separate school district can choose to continue sending their children to the public school and supporting the public district with their taxes. It's a way of looking at enfranchisement "with new eyes," says Bunz…" If people are not forced to attend or support the separate school district, then I don't see a problem" (Blumer, 2000, April 17).

But then Dr. Peters sited the fearsome spectre that looms over those who dare to disturb:

> …the "constitutional can of worms" the new system may open. "You don't want to pave the way for the government to say that the easiest thing to do is to abolish separate schools. We've seen that all it takes is a resolution passed in the provincial legislature and a vote in the House of Commons and the Senate," Peters says. "The die is cast as far as what the federal government will do"…now that a precedent has been set in Newfoundland and Quebec (Blumer, 2000, April 17).

A trustee from Holy Spirit Regional Catholic Division made the following observation in an April 17, 2000, email to this Alberta Learning facilitator:

> I do question the rationale for needing public boards to vote and support a proposal which involves the method by which Catholics can access their constitutional right. Surely, if the present process is flawed, the government should consult with Catholic boards and obtain their agreement.

The Minister met with the Presidents of the three associations on May 2, 2000. He strongly encouraged them to continue the good work done to date.

CHAPTER TWELVE

ISSUES OF BOUNDARY EXPANSION: LEGISLATION *and* LITIGATION

The ASBA 4x4 Committee's Two-Part Alternative

On May 11, 2000, the Board of Directors of the Alberta School Boards' Association (ASBA) established a three-member committee to seek an alternative process for expanding separate school jurisdictions. The home boards for these three representatives were Livingstone Range Regional Division, Pembina Hills Regional Division, and Edmonton Roman Catholic Separate District. The three members were selected to ensure representation from both the Alberta Catholic School Trustees' Association (ACSTA) and the Public School Boards' Association of Alberta (PSBAA) member boards.

On June 8, 2000, the Minister of Learning sent a letter to each of the Presidents of the three trustee associations. The Minister reaffirmed his support for the continued existence of the current number of 41 public school jurisdictions. He also reiterated the supporting resolutions needed from ACSTA and each separate board as well as a written affirmation of support from the Catholic bishops. The Minister then stated that "while I have consistently maintained that the support of both ASBA and PSBAA is wanted before legislation to implement the Presidents' Proposal is put forward, there is no constitutional need for formal resolutions of support from either ASBA or PSBAA."

The ASBA 4x4 Committee surveyed members asking them to identify specific concerns with *the Presidents' Proposal* and possible solutions to address those concerns. The Committee hosted a two-day Solutions Workshop on August 24 and 25, 2000, in Edmonton where neighboring public and separate boards worked together to develop principles that would guide the development of an alternative. This was followed by three special Zone meetings to present the principles developed at the Solutions Workshop, to gather feedback and board suggestions on the elements of an appropriate alternative to the four-by-four process. Zone meetings were in Calgary on September 11, Lethbridge on September 13, and Peace River on September 14.

In his remarks opening the two-day Solutions Workshop on August 24, 2000, Minister Oberg reaffirmed that "this province, this government has no desire, no intent to do what some other provinces have done—open the *Constitution* and eliminate Catholic education" (pn). PSBAA continued to tell school boards that the proposal cannot be implemented without a constitutional amendment based on two arguments. The first point was based on PSBAA's position that section 17(1) protects public boards with *mirror equality* to separate boards. Separate boards cannot be afforded less restriction without impacting the rights of public boards. In the *PSBAA Case* (2000), PSBAA had lost this argument at the Alberta Court of Appeal, but the Supreme Court of Canada decision would not be delivered until October 6, 2000. The second argument was that the vote of separate electors, whereby the majority of the minority compels the entire minority, cannot be ignored without a constitutional amendment, as per the *Schmidt Case* (1976).

In a presentation to Members of the Legislative Assembly on October 4, 2000, Grande Yellowhead Regional Division expressed the specific concern with the proposal that "Catholics can choose and others cannot." But this represented no change. It has always been the members of the minority faith who had the right to choose whether to access separate education or remain part of the public system. Under *the Presidents' Proposal*, it would still be the members of the minority faith who have a choice. It would not be possible to extend the same right to those not of the minority faith to become residents of the separate jurisdiction. A minority right that permits members of the majority to be voting members of the minority is a minority right lost.

True to the time frame contained in the April 14 resolution that conceived the Committee, all interested trustees and senior administrators were invited to an October 19, 2000, ASBA Solutions Workshop at which the Committee presented its draft proposed alternative to the current process. Based on feedback received from boards, the committee submitted its *Final Report* at a special session of ASBA's Annual General Meeting on November 20. A two-part alternative, referred to as Route A and Route B, was offered. Route A was the innovative component:

> The development of a local agreement between boards is strongly encouraged. In this case, the public board and the designated separate board agree locally to a change in the designated separate board's boundary. Legislation will be written to permit local implementation of those agreements, without further need for legislative or regulatory change. Members of the minority faith shall have the

> personal option of remaining supporters of the public board or becoming supporters of the designated separate board.

While no one expected widespread agreement between public and separate boards on the expansion of separate board boundaries, about five pairs of public-separate boards had expressed their intent to attempt this option. If a local agreement was not forthcoming, then Route B could be used, which was essentially *the Presidents' Proposal* fleshed out a bit more.

The President of PSBAA remarked from the floor of the November 20 special session that "we have here a more complicated alternative than the original process—plus the original process. Why do we feel this alternative is better? ASBA has a position that they have no position, yet ASBA put this together" (pn). The Chairman of Prairie Rose Regional Division offered this summary observation on the committee's work over the preceding six months:

> The Committee deserves a commendation for conducting a difficult process openly and fairly. If we cannot resolve this, we are admitting a failure of will. We must conduct our discussion not with language that inflames but with language that brings us together (pn).

The Saga of Bill 16

ASBA asked public and separate boards to report their affirmation or rejection of the Committee's alternative to them by February 15, 2001. As a result, 28 boards affirmed support, 21 rejected support, and 4 boards submitted a formal abstention. Out of 62 total boards, 53 had responded. While 28 boards in support were only 45.2 percent of the total number of boards, it represented 57.1 percent of the 49 boards that had formulated an opinion and voted *for* or *against*. On the strength of this *majority*, Minister Oberg incorporated the committee's proposal into Bill 16, the *School Amendment Act* (2001), which received first reading on May 7, 2001.

Bill 16 amended section 27(4) of the *School Act* (1988). Instead of an individual residing within a separate district who is of the faith of those who established that district being a resident of the separate school district and not a resident of the public school district, such an individual would be able to elect in a form prescribed by the Minister to be a resident of the separate jurisdiction or the public jurisdiction. Sections 132(1) and

135(1) were amended to allow such an individual to declare that their property is assessable for separate or public school purposes. A new Division was added to the *Act* under which the Minister may by order establish any portion of Alberta as a Separate School Region. A Region may have one separate school board. The separate school board may add land in the Region to its separate district by resolution after entering into an agreement with the public board. Alternatively, on the request of at least 3 separate electors, land may be added by resolution after consulting with the public board in accordance with the regulations. A resolution must be passed before December 31 to take effect on September 1 of the next year.

Bill 16 also created the alternative for a non-denominational Francophone Regional Authority to be replaced by both a Public Francophone Regional Authority and a Separate Francophone Regional Authority. The francophone community in Calgary wished to change from a Coordinating Council that advocated for francophone education to a Francophone Authority that functioned as a school board operating schools. Calgary Separate, with the support of the Calgary Bishop, refused to support the transfer of their Francophone school to the new Francophone Authority unless that Authority was Catholic. The principle espoused is that without Catholic governance, there is no Catholic education. Thus the amendment was inspired to address the situation in the Southern Alberta Francophone Region.

Alberta's other three Francophone Regional Authorities shall designate each of their schools as either public or separate. The Minister may replace any of those three Francophone Regional Authorities with both a Public and a Separate Authority when the public electors of the authority exceed 30% of the Authority's total electors and there are at least 500 students registered in its public schools. In the interim, each shall remain a single Authority but the separate school members of the Authority's board will have control over all denomination aspects of the Authority's separate schools.

Bill 16 also included an Alberta Infrastructure initiative to abolish the School Buildings Board that had traditionally taken the approval of school board capital building projects out of the political arena. Once Bill 16 was passed, such projects would be subject to approval by the Minister of Infrastructure. This would prove to be relevant politically to the issue of the alternative process for establishing separate districts.

Rural public boards were always the most concerned with any proposal to make it easier to expand separate jurisdictions. The largest single issue was the viability of small rural public schools already plagued by low enrolments as exemplified by these articles from the weekly press in Barrhead, Sundre, and Olds, respectively. "In the city this is really not an issue. They have two systems which can be supported by the larger population. But it is a little more complex when you get to rural Alberta which is facing depopulation" (Smith, 2000, June 27). "They could set up a school any place. Basically that could increase separate schools in rural areas. In small communities with a limited population it would be absolutely divisive and would devastate our programs" (Victor, 2001, May 16).

> The Board does not want to see teachers released as a result of the formation of separate school districts, further diminishing the school's ability to fulfill obligations to serve the community at an acceptable level...any other school in the area would be disastrous and put the already struggling programs at risk (Elburg, 2001, May 30)

PSBAA actively campaigned not just against the Bill 16 alternative for expanding separate school jurisdictions but against separate school education itself. The following references from the weekly press in Carstairs and Innisfail, respectively, quote the PSBAA Executive Director. "The PSBAA believes in inclusive education and we would prefer that all the kids were being educated in one system" (Logan, 2001, May 28). "Separate school education fragments and weakens education in our communities...We would rather that all people living in a smaller community would be part of one education system" (Hillier, 2001, May 29).

The real surprise in the process came when the ACSTA did not support Bill 16 any more than the PSBAA. After Bill 16 was introduced in the Legislature, ACSTA stated that individual choice was to apply only to areas added under the new alternative. This had never been the intent of any of the other parties to the proposal. The necessity for it to apply to all areas served by a separate jurisdiction was made clear not later than the meeting of January 31, 2000 between the Executive Directors and the Deputy Minister of Learning. At the March 3, 2000 meeting of the Executive Directors with the three senior lawyers from Alberta Justice, the documentation necessary for individual choice to apply to existing separate districts was clearly discussed. *The Presidents'*

Proposal document of March 10, 2000, stated, "there would be an option for Catholics in Alberta to choose." The Minister's letters of April 12 and June 8, 2000 to the three trustee associations clearly specified the need for the documentation that would enable individual choice in each of the existing separate jurisdictions. Alberta Justice stated that to restrict the choice of separate school electors to only the newly created areas would create discrimination for no justifiable reason.

The ASBA President assured the Minister in a meeting on May 23, 2001 that the intent of the alternative was for individual choice to apply to all separate electors in Alberta and that ASBA would withdraw its support of the initiative if that were not honoured. ASBA and public boards would not support a split, discriminatory choice. This left Minister Oberg at an impasse. The Spring Session of the Legislature adjourned on May 28 and Bill 16 was held over for the Fall Session.

Alberta Infrastructure had been withholding approvals of school capital projects pending the anticipated abolishment of the School Buildings Board under Bill 16. As reported on the front page of the Calgary Herald, Minister Oberg informed trustees of some unexpected negative consequences to the delay of Bill16:

> "One of the unfortunate parts about Bill 16 being delayed until the fall is that the School Buildings Board will still be functioning until the fall," Oberg told trustees Monday at the spring general meeting of the Alberta School Boards Association in Red Deer. He said that will likely mean delays in granting requests to modernize older schools and build new ones (Derworiz, 2001, June 5).

The Carstairs Courier reported that the Minister was both annoyed and determined:

> The Minister seemed very annoyed that his proposed legislation had provoked strong reaction from many public boards, including ours, and made it clear that he was not backing down on enforcing the minority religious rights in education that are written into [the] Alberta Constitution. "It will be brought forward in the Fall and it will be passed," he asserted (Taylor, 2001, June 26).

PSBAA's *Provisional Position Paper: Public and Separate Schools*, slightly updated from its November 1997 version, was now on PSBAA's website. It still advocates inclusiveness in a single public system and the opportunity for the people of Alberta to amend the *Constitution* at anytime. Added is a vision statement. "Our vision will be achieved when the minority freely chooses to rejoin the majority, in the public school system."

ACSTA moved to a position of no individual choice in areas expanded under the new alternative, consistent with separate districts established under the traditional process. The following Western Catholic Reporter reference summarized the ACSTA position:

> The biggest issue of concern for Catholic school trustees is the fact Bill 16 offered Catholics across the province the opportunity to choose whether to support the public or separate school district in their area…The bill…is unacceptable to us because it takes away a constitutional right…As part of the constitutionally mandated process of forming a separate school district in Alberta, members of the minority faith in a newly formed district are automatically supporters of that separate school district.
>
> While the ACSTA originally resisted any discussion on the issue of choice, it later conceded that Catholics in areas which are formed under one of the new "alternative" methods could choose which district to support. However, Bill 16 expanded on that concession by offering a choice to Catholics in already established districts (Gonzalez, 2001, November 5).

Alberta Justice was emphatic that to give separate electors neither a vote under the traditional process nor individual choice would most assuredly represent a constitutional violation. The protected constitutional right is a right of the separate electors to choose to access separate education. It is not a right of a neighboring separate board to decide for them.

The Minister was left with no option but to withdraw the initiative from Bill 16. When Bill 16 was passed on November 14, 2001, there was no longer a choice for individual separate electors. Also removed were the board-initiated options to expand into a separate region.

It is regrettable that so much effort by so many for so long could not have produced some measure of success. "The existence of different actors with different goals means that the power relation among these actors, as well as their access to policy arenas, have an impact on the policy process and its outcomes" (Klemperer, Theisens, and Kaiser, 2001: p. 203). Cultural diversity based on religion is a powerful moral force. When the reason for organizations to exist is based on either the furtherance or elimination of that diversity, it is a brave warrior indeed that enters the political arena in an attempt to identify common ground.

> Of course some people have no difficulty with the question "Whose culture/whose values?" To them, the answer is simple "Mine, and only mine"…Those who answer the question in this way might be said to have little or no effective sense of democratic reciprocity (Boyd, 1996: p. 610).

Constitutionality of the Expansion and Services Order

What did remain of the initiative in Bill 16 was the ability of the Minister to establish separate school regions under section 208.02(1) of the *School Act* (1988), section 221.2(1) of the *School Act*, 2000. As drafted in Bill 16, the subsection read:

> The Minister may by order establish any portion of Alberta as a Separate School Region.

But the provision had been expanded by house amendment to include an additional provision.

> The Minister may do one or both of the following by order:
> (a) establish any portion of Alberta as a Separate School Region;
> (b) *provide for services by a separate school board in a Separate School Region* (emphasis added).

The provision that a Region may have only one separate school board was also retained.

Bill 16 had provided that, under section 208.05 of the *School Act* (1988), "The Minister may make regulations respecting the consultation process to be follow for the purpose of " a separate board proceeding with the alternative process where an agreement with the public board could not be reached. The consultation theme was retained, but it too was modified by house amendment. Section 221.3 of the *School Act* (2000) provides that the Minister may make regulations:

> (a) respecting the consultation process that must be followed in respect of the establishment of a new separate school district in a Region by separate school electors under Division 2;
> (b) providing for one or more means of settling disputes that may arise between a separate school board and a public school board as a result of a new separate school district being established in a Region by separate school electors under Division 2.

These potential consultation and disputes resolution processes would apply to the traditional four-by-four method of establishing separate districts under Division 2 of the *Act*. If the Minister were not able to provide an alternative process within the *Act*, it appears that he wished to at least apply the consultation and disputes resolution components of that alternative to the traditional process in a bid to make such establishments less divisive within the community.

In early 2002, the Minister proposed a consultation and disputes regulation under section 221.3 of the *School Act* (2000). It would create a consultation process between public and separate boards where separate electors wished to establish a separate district under the traditional process, but if the public board supported the establishment the Minister would simply add the lands to a separate district, bypassing the traditional process. PSBAA took the position that the proposed regulation would be valid only if there was a plebiscite of the separate school electors. Only the separate electors could avail themselves of a separate school education and the minority faith community must have a means of deciding against the establishment of separate school education. It remained the ACSTA's position that the power of the Minister to add lands to a separate district under section 210 of the *School Act* (1988), now section 239 of the *School Act* (2000), was completely unfettered. It was the opinion of Alberta Justice that the position of PSBAA was the stronger constitutional opinion. Section 41 of the *School Ordinance* (1901) empowered "the minority of the ratepayers in any district whether Protestant or Roman Catholic" to establish a separate school district. This is the right protected under section 17 of the *Alberta Act* (1905). It is the constitutional right of the minority faith residents to decide whether to establish a separate district, not a neighboring separate school board. Also, the purpose of section 221.3 of the *School Act* (2000) is to address consultation and the settling of disputes under the traditional process, not the Minister's authority to add lands to a separate district under section 239. It was the opinion of ACSTA that the mandated consultation process should not apply to traditional separate district formation. The regulation was not passed.

The Alternative Process

The Minister then put forward a Ministerial Order under section 221.2 of the *School Act* (2000) entitled the *Separate School Regions Establishment and Provision of Services Order*. Sections 2 through 16 of the *Order* proposed to establish 15 Roman Catholic Separate School Regions, each one containing one of the 15 existing Roman

Catholic separate school jurisdictions. Sections 17 through 23 contained a communication and disputes resolution process through which the separate jurisdiction could expand its jurisdiction's boundaries within its designated region, based on a written request by separate electors in the region.

While section 221.3 of the *Act* (2000) had lacked any foundation for the Minister to address the terms applicable to expansion outside of the traditional process, section 221.2 did permit the Minister to establish separate school regions and "provide for services by a separate school board in a Separate School Region." Section 22 of the *Order* stated:

> Upon receipt of a statement of support from the public school board, following a public meeting under section 21 and upon receipt of the minutes of the public meeting, the Minister may under section 239 of the School Act add land in the Separate School Region to the separate school district or division, if the Minister is satisfied that the addition of the land does not prejudice the rights of separate school ratepayers in the expansion area and is for the general advantage of those concerned.

Alberta Justice remained concerned about the strict constitutionality of the Minister creating new areas of a separate school jurisdiction without the separate electors of the new area having the opportunity to vote on whether to access separate education. However, Justice did concede that if the public board and the separate board agreed on the expansion, there would be little likelihood of a challenge to any additions to land, although even a single disgruntled separate school elector could potentially mount a challenge based on the lack of a vote of separate electors. The requirement for the minutes of the joint public meeting would give the Minister further evidence of the level of support or opposition on which to base a determination that the addition of lands was for the general advantage of those concerned and further reduce the political probability of there being a challenge.

On May 1, 2002, the Executive Director of PSBAA distributed a memorandum to all PSBAA member boards. It stated that "the PSBAA strongly advises all public school boards to adopt the consistent practice of non-support for the alternative manner of expanding the boundaries of separate school boards within separate school regions."

In a meeting held May 5, 2002, the President of ACSTA managed to convince Minister Oberg that the support of the majority public jurisdiction was not necessary for the Minister to expand a minority separate jurisdiction under section 239. The Minister signed Ministerial Order 01/2002 on May 23, 2002. It was filed as Alberta Regulation #109/2002. Section 22 of the *Order* as signed states:

> Upon receipt of a statement from the public school board and following a public meeting under section 21 and upon receipt of the minutes of the public meeting, the Minister may, under section 239 of the School Act, add land in the Separate School Region to the separate school district or division if the Minister is satisfied that the addition of the land does not prejudice the rights of separate school ratepayers in the expansion area and is for the general advantage of those concerned.

Now the Minister will review a statement from the public board but that statement does not necessarily have to be one of support. Section 22 retains the requirement of the minutes from the public meeting and the two-part test from section 48 of the *School Ordinance* (1901) for the Minister to add land.

Expansions of separate jurisdictions within their regions under sections 17 to 22 of the *Order* were successfully used five times over the next year. In each instance, the public board was supportive of the expansion proposed by their sister separate board. Holy Spirit Separate and Horizon School Division completed two expansions with one each completed by Calgary Separate and Rocky View Division, Grand Prairie Separate and Peace Wapiti Division, and Living Waters and Northern Gateway Division. Northern Gateway and Peace Wapiti were members of PSBAA. Horizon and Rocky View were not.

On October 18, 2002, the board of Aspen View Regional Division passed a Notice of Motion that the board would consider closing their school in the Village of Waskatenau at the end of the 2002-2003 school year. On March 19, 2003, the Aspen View board voted 6 to 3 to close the Waskatenau School at the end of June. The Waskatenau School Parent Advisory Council was extremely disappointed in the board's decision and had worked hard to keep their community's school open. In April 2003, a group of Waskatenau residents contacted St. Albert Protestant Separate School District to discuss the possibility of St. Albert Protestant expanding to assume responsibility for the Waskatenau School. St. Albert Protestant would not promise to keep the school open in Waskatenau if that community's students became residents of St. Albert Protestant. The Waskatenau residents next turned to Lakeland Roman Catholic Separate School District.

The separate school region anchored by Lakeland Separate included all of Aspen View Regional Division.

On June 11, 2003, Lakeland Separate served notice of its intent to expand into Aspen View to both the Minister and the Aspen View board as required under section 18 of the *Order*. On July 23, 2003, Aspen View sent a letter to Lakeland expressing concerns about the proposed expansion (s. 19). The two boards held a joint meeting in the absence of the public to discuss those concerns on August 12 (s. 20). Aspen View's concerns were not resolved. On September 3, 2003, the public meeting was held in Waskatenau (s. 21). A Chair appointed by the Minister conducted the public meeting, as the two boards had been unable to agree on a Chair. The public meeting was less than congenial. Prior to that meeting, the Aspen View board had already threatened legal action in a letter to the Minister dated August 14. The PSBAA released a Media Advisory dated September 3 that said in part:

> Members of the minority faith are being discriminated against by the operation of the so-called "alternative process". Separate school education is being imposed on people who have no direct means of involvement in the decision. Members of the minority faith who are opposed to the outcome have no way of avoiding the consequences. The government is engaged in gerrymandering in order to achieve the outcome which separate school jurisdictions want.

Lakeland had proposed to take in a huge tract of land in one step consisting of all of the Counties of Smoky Lake and Thorhild and the Boyle attendance area of the County of Athabasca. None of these three counties had ever had a separate school district within their boundaries. The map of the proposed lands to be added, posted at the public meeting, resembled a piece of *Swiss cheese*. The proposal purposely excluded specific quarter sections of land. The Chair of the Lakeland board explained at the public meeting that these excluded lands were occupied by Catholics who did not want to be included in the separate district. Besides being prejudicial to their constitutional rights, it would have been highly inappropriate to use the alternative process set out in the *Order* to enable separate school electors within the proposed area of expansion to opt out and remain part of the public system. Such individual choice of separate electors is not an option and had not been supported by the ACSTA when proposed in Bill 16.

Concerns were expressed about the motives for the expansion, coming in response to a public school closure. The initial approach to St. Albert Protestant and then Lakeland Catholic gave the impression that the Waskatenau community was shopping around for a solution to that closure rather than being motivated by a desire to access Catholic education. There was a question about whether Catholics or Protestants were the minority faith in that community.

Lakeland submitted their formal letter of request to add the proposed lands on September 8, 2003. The Minister's letter of response was not sent until February 6, 2004. The Minster requested additional information "in order to be satisfied that the addition of the land does not prejudice the rights of separate school ratepayers in the expansion area and is for the general advantage of those concerned." Information requested from the board included evidence of the minority faith of the residents in the expansion area, the excluded properties in the expansion area, the rationale for such a large expansion area, the board's plan for providing educational services to its new residents, and the board's efforts at disputes resolution with Aspen View under section 23 of the *Order*.

By June 2004, the Minister was satisfied that he could meet the two-part test of section 48 of the *School Ordinance* (1901). The expansion area had been significantly reduced. The Boyle attendance area in Athabasca County had been completely excluded, as had three public districts in Smoky Lake County and 25 districts in Thorhild County. There were no longer any excluded individual properties within the expansion area, but two of the excluded public districts were within the expansion area. The 2001 Canadian census revealed that Roman Catholics were in the overall minority in the revised area of expansion.

The following appeared on the front page of the Redwater Review:

> Alberta Minister of Learning Lyle Oberg approved the expansion of the Lakeland Roman Catholic Separate School Division [sic] boundaries to include part of Aspen View Regional Division on June 29. That same day Lakeland announced its intention to open a school Aug. 30, 2004 to offer the choice of Catholic education to the electors in Waskatenau and area (Lakeland Catholic, 2004, July 6).

Also on June 29, 2004, Lakeland made a request to the Minister of Infrastructure for the transfer of ownership of the school building in Waskatenau from Aspen View to

Lakeland. On August 5, the Minister of Infrastructure sent a letter to Aspen View suggesting that the board declare the Waskatenau school facility surplus and transfer it to Lakeland for the depreciated value of the local share of the property or lease the school to Lakeland. The response from the Chair of Aspen View dated August 9 indicated that it was doubtful that Aspen View board would approve either of those options and suggested instead that the Minister of Infrastructure use his own authority under section 200(3) of the *School Act* (2000) to make the transfer. Accordingly, on August 11, 2004 the Minister of Infrastructure directed Aspen View to transfer the school to Lakeland effective immediately. Holy Family Catholic School opened in Waskatenau as previously announced on August 30, 2004.

Litigation

On November 5, 2004, Aspen View Regional Division filed an application for a judicial review with the Attorney General of Alberta and the Minister of Learning as respondents. The application questioned the constitutionality of separate jurisdiction expansion under the *Order* and section 239 of the *School Act*. It also contained questions of procedural and administrative errors in the process including failing to follow the rules of natural justice and procedural fairness. On November 25, 2004, Gene Zwozdesky became Minister of Education. The new Minister placed a moratorium on any further use of the alternative process while that process is before the courts. On December 9, 2004, ACSTA was granted party status as an additional respondent by consent of the parties. PSBAA was given intervener status on June 29, 2005.

To date, there has been an exchange of various affidavits only, respecting the application for judicial review. There may be an application to convert the action into a trial. Judicial reviews are used when no facts are in dispute, which is not the case here. PSBAA may be in no hurry for Aspen View to move the process along. Trials are costly and, with the Minister's moratorium on any further use of the alternative process, there is no pressing need for action.

The affidavits of the Presidents of both ACSTA and PSBAA define the core issues. The November 17, 2004 affidavit of the President of ACSTA contains the following:

> Catholic Separate school electors enjoy the constitutional rights and privileges to a Catholic separate school education including the right to form new Separate school districts (the constitutional right to formation) [the traditional process], the right to expand or alter the boundaries of established Separate school districts (the constitutional right to expansion or boundary alteration) [under section 48 of the *School Ordinance* (1901)], the right to provide for a fully permeated denominational education for their children, the right to enroll their children in Catholic Separate schools, and the right to vote and run for the position of trustee for Catholic Separate school districts;
>
> There should be no confusion between the constitutional rights for formation and the constitutional rights for expansion or boundary alteration, and the expansion of Separate school districts does not adversely affect traditional 4x4 formation of Separate school districts.

The April 15, 2005 affidavit of the President of PSBAA states in part:

> To the extent that sections 221.1 to 221.3 of the *School Act* dealing with the establishment of separate school regions purports to amend or ignore sections 212 to 219 of the *School Act* which reflects the constitutional rights of separate school electors [the traditional process], the PSBAA says that these new sections are unconstitutional. Specifically, as interpreted and applied in the circumstances which is the subject matter of this litigation, they detrimentally impact on the rights of separate school supporters to participate directly in a democratic process that is conducted locally to decide whether to support the existence of a separate school.
>
> The PSBAA believes that the purported reliance on section 239 of the School Act by the Minister of Learning to add land to the Lakeland Roman Catholic Separate School District No. 150 in the absence of the establishment of a separate school district pursuant to the *School Act*, violates section 17(1) of the *Alberta Act*.

Lakeland Separate District again advanced the argument that a form of individual choice had been given to separate school electors in the proposed expansion area. The affidavit of the Superintendent of Schools for Lakeland dated April 11, 2005, stated:

> I believe that no Catholic elector in the proposed expansion area had any reason to be deprived of their right to continue to vote for public school trustee or to run for the position of public school trustee, to have their taxes designated for the public school board or to have their children attend public schools, as long as they simply made known to Lakeland R.C.S.S.D. their desire to be excluded from the expansion area.

There is at least one basic concern with the Bill 16 amendments. Section 221.2(3) provides that, "A Region may only have one separate school board." The intent was that, if there was a Roman Catholic region established, there would be only one Roman Catholic separate school board within that region. However, section 221.2(3) is open to being interpreted as attempting to prevent the possibility of a Protestant Separate District ever being established within such a region in a public district not included in the separate school jurisdiction. That should be corrected by amending the section, for example, to read, "A Region may only have one separate school board *of the minority faith of the Region, whether Protestant or Roman Catholic*."

In the final analysis, it will not matter whether the *Expansion and Services Order* was properly constituted or whether the process used for expansion within that *Order* exemplifies the rules of natural justice and procedural fairness. Even if the *Order* is eventually struck down, the Minister still has the ability to add lands to a district under section 239 of the *School Act* (2000) supported by section 48 of the *School Ordinance* (1901). The core issue is an interpretation of section 48, which provided that:

> The commissioner may by order notice of which shall be published in the official gazette alter the boundaries of any district by adding thereto or taking therefrom or divide one or more existing districts into two or more districts or unite portions of any existing district with another district or with any new district in case it has been satisfactorily shown that the rights of ratepayers under section 14 of *The North-West Territories Act* to be affected thereby will not be prejudiced and that the proposed changes are for the general advantage of those concerned.

Notice that the commissioner, now the Minister, may alter the boundaries of *any* district provided that the two-part test is met. Section 48 was clearly intended to give the central government authority to expand separate districts, as well as public districts. The traditional process is not the only constitutionally protected method of extending separate school services. But to what extent does section 48 enable the Minister to use section 239 of the *School Act* (2000) to expand separate school boundaries rather than relying on the traditional process? And then there is that two-part test. Do "those concerned" include only the separate electors when the expansion is for a separate jurisdiction or are the concerns of the majority to be considered? Is the power of the Minister under section 239 to be read narrowly, so as not to undermine the traditional process that requires a vote of separate electors? If so, that would appear to preclude the Minister from adding large tracts of land to a separate jurisdiction in one step, as was done in Aspen View. On the other hand, perhaps ACSTA is correct that the Minister's power is completely unfettered in this regard.

What does appear clear is that a judicial interpretation of the extent of the Minister's authority under section 48 of the *School Ordinance* (1901) and section 239 of the *School Act* (2000) would be very helpful to all parties. The eventual outcome of this litigation will be of some significance.

Conclusion

In attempting to change public policy, "perfect implementation never happens…some degree of failure is almost inevitable" (Pal, 2001: p. 183). For over a decade, the province and the school trustee associations struggled with the need for an alternative to the traditional process of expanding separate school services one four-by-four public district at a time. Today, with the Minister's moratorium on further use of the alternative method, only the traditional process is available, the same as before the struggle began. That would seem to be a failure of some magnitude.

ACSTA moved from expansion proposals based on public elementary attendance areas, to the optimum service area of a separate school, to a *New Vision* based on an imposed expansion of separate jurisdiction boundaries to cover the entire province. PSBAA initially proposed to role up all rural public districts within each school division and county, in which a separate district did not exist, resulting in any further separate jurisdiction expansions being coterminous with those divisions and counties. This proposal also included individual choice for separate electors. But PSBAA was never able to support such an alternative without a plebiscite of the effected separate electors and was unwilling to recognize individual choice for separate electors as being superior to collective choice without a judicial reference, something ACSTA strongly opposed.

ACSTA initially supported the principles of individual choice for separate electors in Alberta and coterminality of separate jurisdictions with one or more public jurisdictions. With Bill 16 on the floor of the Legislature and PSBAA actively working in rural Alberta to defeat it, ACSTA first moved to individual choice only in expanded areas and then to no individual choice in Alberta. This directly resulted in the withdrawal from Bill 16 of the scheme initially agreed to in the *Presidents' Proposal* and enhanced by ASBA's 4x4 Committee. ACSTA persuaded the Minister to abandon the initial commitment to coterminality. The 15 separate school regions established by the *Expansion and Services Order* maintained all pre-existing separate jurisdiction service areas. The Minister inserted by house amendment to Bill 16 the authority to impose a consultation and disputes resolution regulation on the traditional process, yet ACSTA persuaded the Minister to take no subsequent action on such a regulation. ACSTA also persuaded the Minister to abandon the requirement for public board support of expansion under the alternative process provided by the *Order*. When public board support was evident in the first five uses of the alternative, there were no challenges. The first time the alternative was used without public board support, a litigation initiative resulted.

The Minister strongly supported the search for an alternative at all stages. He defended the Bill 16 alternative until all three trustee associations had withdrawn their support. He then proposed to address an alternate scheme under a regulation making authority for the traditional process. Next, the Minister implemented an alternative under his authority to make an Order, but removed the requirement for public board support that would have greatly minimized the risk of judicial challenge. "...policy making is inevitably a process of...not infrequently flailing around for anything at all that looks as though it might work (Ball, 1998: p. 126).

The ACSTA appeared to get everything they wanted in their *New Vision* proposal, with the exception that the rate of expansion would be determined by each separate board rather than be imposed on them. But now with only the traditional process remaining, they may have just out maneuvered themselves. It appears that ACSTA will be required to defend their interpretation of section 48 of the *School Ordinance* (1901) before the courts. In the *PSBAA Case* (2000), ACSTA was strongly adverse to the courts defining the limits of separate school rights. Now they must do precisely that.

CHAPTER THIRTEEN

CURRENT ISSUES *and* THE THOUGHTS OF KEY OPINION LEADERS

The Interview Group

During the months of February to April 2005, I interviewed seven individuals who hold, or have held key positions of influence in the dynamics of elementary and secondary schooling in Alberta and, occasionally, the issues related to separate schooling in particular. This group of seven includes the Executive Directors of each of Alberta's three school trustee associations, legal counsel for the Alberta Catholic School Trustees' Association, a Professor of Educational Policy Studies at the University of Alberta, an Assistant Professor of Theology at St. Joseph's College of the University of Alberta, and a Provincial Government Cabinet Minister.

It should be noted that the opinions expressed by these individuals are their own and may or may not represent the opinion of any organization with which they are associated. A listing of the questions discussed with each interviewee is found in Appendix E.

David Anderson (interviewed April 13) was appointed Executive Director of the Alberta School Boards' Association (ASBA) in 1995. He holds a Bachelor of Education degree from the University of Alberta, a Master of Arts degree in Social Policy from the University of Calgary and a certificate in Community Economic Development. Mr. Anderson also has an extensive government background in economic development and environmental, constitutional and resource development issues.

David King (February 7) has served as Executive Director of the Public School Boards' Association of Alberta (PSBAA) since 1990. He was a Member of the Legislative Assembly from 1971 to 1986 and was a member of Cabinet for seven years. Mr. King served as Minister of Education from April 1979 to February 1986. He holds a Bachelor of Arts degree in Political Science and History from the University of Alberta.

Stefan Michniewski (March 11) became Executive Director of the Alberta Catholic School Trustees' Association (ACSTA) in 1996. He holds a Bachelor of Education degree from St. Thomas More College, University of Saskatchewan, and a

Masters degree in Educational Administration, Curriculum and Instruction from Gonzaga University, Spokane, Washington. He majored in religious education and theology and taught religion. He also served as a Catholic school administrator and a religious education consultant. He notes that he spent twelve years in the seminary.

Kevin Feehan, Q.C., (February 3) is a Partner in the Edmonton office of the law firm, Fraser Milner Casgrain. He has served as legal counsel to ACSTA since 1990 and represented ACSTA at the Supreme Court of Canada in both the *PSBAA Case* (2000) and the *Bill 160 Case* (2001). Feehan has served on the Board of Governors of St. Joseph's College and the University of Alberta, where he initially received his Bachelor of Laws degree. He is an active academic writer and lecturer.

Dr. Lyle Oberg (March 8) graduated as a medical doctor from the Faculty of Medicine at the University of Alberta and practised as a family physician in Brooks, where he also served as a school trustee. He was elected to the Legislative Assembly in 1993. He became a Cabinet Minister in 1997 and served as Minister of Learning from May 1999 until November 2004. Following the November 22, 2004 provincial election, Dr. Oberg was appointed Minister of Infrastructure and Transportation.

Dr. Frank Peters (February 15) earned a Bachelor of Arts degree at the National University of Ireland in Dublin and his B.Ed., M.Ed. and Ph.D. degrees at the University of Alberta. He is a Professor and Associate Chair of the Department of Educational Policy Studies, Faculty of Education, University of Alberta. His areas of specialty include educational governance and leadership, politics and policy.

Rev. Fr. Stefano Penna (April 14) is an Assistant Professor of Theology at St. Joseph's College, University of Alberta. He is also a Catholic Priest. Rev. Fr. Penna attended seminary at the Toronto School of Theology, University of Toronto, where he earned a Master of Divinity degree. He completed two years of study in Rome earning his Licentiate in Sacred Theology degree from the Pontifical Gregorian University. He has a Ph.D. (pending) in religious studies from Yale University, New Haven, Connecticut. Rev. Fr. Penna has worked as a consultant with ACSTA and various Alberta school boards on Catholic education and teacher formation.

Rev. Fr. Penna started me off with a contemporary reality check. He began our discussion by volunteering two important pieces of information: "I'm a product of

Catholic education. I'm from Saskatchewan." "So's half of Alberta," I chimed in. "I know," says he, "that's the hope for the place."

Shared Facilities

The appropriateness of public and separate school jurisdictions sharing school facilities or portions of school facilities has been a topic of interest in recent years. Public and separate jurisdictions in some Alberta communities have made a success of at least sharing a school site and partially sharing some common areas of a connected school facility. The following article from the *Alberta Report* describes one such success but noted that there have been concerns from the greater Catholic school community:

> One maverick Catholic school district is persuaded it has nothing to fear from co-operation. Red Deer Catholic Schools…plans to share a school in Sylvan Lake by September 2000. "We asked ourselves what is best for our students," says Dick Dornstauder, secretary-treasurer. "If we thought we would have to sacrifice anything important, we wouldn't go ahead with it." Red Deer Catholic and a public school will share a gym, commercial kitchen, "current technology" facilities (industrial arts and home economics), an auditorium and some meeting spaces. …We have seen tremendous respect from the Chinook (public school district) regarding our need to keep our separate identity," says Mr. Dornstauder. But now he feels a degree of opposition from within the larger Catholic education community. "We have noticed their lack of support," he says (Yu, 1999, July 26).

On January 24, 2003, the Board of Directors of ACSTA unanimously adopted Fundamental Principles for the building of Catholic schools in Alberta. Included is the statement, "The ACSTA and its member boards oppose the joint use of school buildings with public school boards in any manner that has the effect of undermining or interrupting the full permeation of Catholic values and benefits."

The Capitalist Denomination

Parents from both the public and separate system in the south Edmonton suburb of Twin Brooks demanded in September 1998 that new schools be built in their area. But the province remained firm that no money was available until district utilization rates improved. New funding was found to support experimental schools, which employ strategies to better utilize space. So Edmonton Public proposed that a shared facility be constructed in Twin Brooks that would accommodate both public and separate students.

The province indicated a willingness to support such a facility. "But ECS concluded at a June 28 meeting that exposing Twin Brooks children to what it says would become a watered-down form of Catholic education is more dangerous than possibly losing Catholic students to public schools" (Yu, 1999, July 26). Sharing gymnasiums, kitchens and offices with a public school under a common roof would risk too much assimilation.

Two years later in June 2001, the province approved the construction of a new Catholic junior-senior high school for the Callingwood area of west Edmonton. The project would represent a dramatic first in that Edmonton Catholic would share the site with an IGA grocery store. The province had approved $12.6 million for the project while IGA parent company, Sobeys West, was chipping in an additional $3.2 million to the school, for the privilege of leasing the land and sharing the site. The project was anointed by pundits as *Shopping Cart High* and *St. Sobeys*.

> "I'm really discouraged by it," sighed ATA president Larry Booi… He [Booi] did make a good point when he exposed the hypocrisy of the Edmonton Catholic School Board which rejects jointly run facilities with their public-board brethren. …"I find it troubling that they wouldn't share space with the public school system, yet it's OK to share space with a commercial venture," Booi said (Waugh, 2001, June 22).

The project ultimately failed to get municipal approval as the proposal violated the permitted use for school and municipal reserve lands under provincial legislation. But the question must be asked why the Edmonton separate board chose to partner with a commercial enterprise when they so adamantly refused to share facilities with their public education counterparts? If sharing some common areas under one roof with a public school offers too much risk to Catholic values, how did sharing with the capitalist denomination seem more desirable? Interviewees were asked how they would explain that apparent dichotomy?

Rev. Fr. Stefano Penna, by way of philosophical background, explained that Catholics believe they are called "to live in the world in a holistic kind of way, that there is no part of living in this world that is not to be engaged in faith." Within the environment of education "the carriers of meaning, images, programs, and personnel are all intentionally caught up with the vision of drawing forth from the people that are involved in the community an imagination for the Kingdom of God." This concept is often referred to as *permeation*. Such intentionality is inimical to the structure of public schools. "You have two profoundly different visions…the creation of two different spaces is actually the best way to go." Kevin Feehan made reference to a philosophy of education that originated prior to Confederation. Those interested in Catholic separate education believed that everything to do with education "should be built around the practice of their religion." To the contrary, public education supporters "wanted anything but" an education system permeated by religion "because of the disparate views of the Protestant churches of the time." "There was an absolute disjoint" between Catholic schools and public schools, "and I think that is true today."

> I think that the primary purpose of Catholic education is to practice the Roman Catholic faith…and everything that school does should be driven primarily towards the practice of religious faith. And religion should permeate every aspect of the day, not only in religion class but in every class.

Dr. Frank Peters offered a bit more of a pragmatic view of the proposal of Edmonton Catholic to share a facility with a grocery chain. At least "you don't have people who are doing education differently from you under the same roof." With Edmonton Public and Edmonton Separate, "you have two different understandings of what it might mean to do education." In Catholic schools, "it's not just that you do religion at a set half-hour or you have a prayer first thing in the morning…the entire curriculum is infused with Christian teachings." Stefan Michniewski added that while sharing facilities with a public school is problematic to being "able to completely permeate our system," Edmonton Separate took a look at this other alternative in a diligent effort at fiscal efficiency. But then he adds:

> Now in a whole other area, I wasn't attracted by it. A student misbehaves and you go get him to clean up aisle five, you know. There are things in my mind that don't jive, but it's certainly not outside of the kind of way that ACSTA and its member boards were trying to look at trying to be reasonable and trying to be community minded.

David Anderson noted that there have been many different kinds of partnerships relating to school sites and school facilities, "some with public and separate boards, some with francophone boards, some with commercial enterprises." He then offered a strong advocacy for local autonomy.

> Local boards are absolutely free to partner with whoever they wish in whatever ways they wish. If they choose to embark on a path that sees them sharing a site with a commercial facility, more power to them. That's what local democracy is all about. And that's why school boards are elected to make those decisions that they think reflect the views of their constituents.

David King not unexpectedly offered an alternative viewpoint, noting that Catholic separate school education "is to be provided in the context of an exclusive community." Sharing facilities with a commercial venture does not impact the rationale for that exclusive community. "Sharing separate school facilities with a public school – an inclusive community – might well call into question the rationale for the exclusive community." He then stated "it appeared that the separate school board was prepared to make a deal with *mammon* in preference to making accommodation [for] the community as a whole so that all children could be educated in proximity, some to others." Dr. Lyle Oberg had a more authoritarian explanation:

> I think in essence what happened is that Edmonton Catholic was following the direction of one of their bishops, Bishop Henry from Calgary. I think prior to that there certainly was an acceptance that you could share space with the public board. And unfortunately though what happened was that Bishop Henry came in and subsequently said that it cannot happen. As you know, I sat down with the four Bishops that are present in Alberta and they basically agreed with that and quite simply said they would not bless a school if they were joined together, which of course in the Catholic religion means that the school couldn't open.

Learning from Each Other

Why is the separation of Catholic students and non-Catholic students considered so important? Would not both Catholic and non-Catholic students learn more understanding of others in their community if they were exposed to each other for at least a portion of the school time?

David King appeared to understand the Catholic motivation, but had a different vision:

> I think that the Church has demonstrated historically that it considers education of its young people to be vitally important to the faith…they talk about permeation …they talk about moral formation and the formation of the child generally…And I think their position is that that is best done in a very stable environment over which they have control… "We don't expect Roman Catholic kids to become Roman Catholic adults who are living forever in a sterile environment but we

> believe that it is more likely that they will do well in any environment if they are formed in an environment over which the Church has control."

Mr. King then emphasized that he clearly does not agree with that motivation. "I would say that the analogy I've just made is not good analogy. I do believe that we are better off if little Catholic kids are educated beside little Jewish kids." Dr. Lyle Oberg appeared to hold a similar vision of children from different backgrounds being able to learn from each other. "I couldn't agree with you more on that… However, it is the religious belief out there that the Catholic religion feels that they should be educated in their surrounding with their own religion, religious people."

David Anderson focused on a larger picture, noting that schools do not exist in isolation from our society as a whole.

> We don't ghettoize our Catholic community in this province… They're not shunted off and say "you can't have any contact with people not of the Catholic faith." …So there's lots of opportunities for sharing between Catholic students and public students at all kinds of levels and all the time—after school, before school, and in the evenings and everywhere else. Whether that should be extended into the daytime experience of a student is really a choice which individual boards, once again, would need to make reflecting the views of their communities. And I know some school boards have exchanges of students during class hours for different classes.

Stefan Michniewski affirmed that the separate system is not trying to cocoon its children. "It's not the idea of being separate from the world, it's the idea of being *separate*…in order that we can do fully what we have a right to do and what parents want us to do." Kevin Feehan stated that he believes in the school as an incubator for a holistic Catholic education within a pluralistic society:

> We live in a very pluralistic society, and I think that's great. …But within that pluralism, I do think that there is a need for an incubator place and I think that the best place for that in society today is in the school system. So, for example, you take my own personal growing up… I was involved in the community in every way, shape or form. But I always had the incubator of the school system where I would go for my fully permeated holistic education that addressed not only my mental needs but also my emotional needs and my spiritual needs and my physical needs.

Dr. Frank Peters believes that you must do something more deliberate in the curriculum than just bringing students together. Otherwise, there is a danger of misunderstandings and bigotry arising in either our separate or our public schools "out of the fear of the other, as it happens right now."

> Tolerance is not just something that one develops just because people from different backgrounds happen to be together. Something deliberate has to be done to make the differences public, establish a context in which the differences can be acknowledged and then fundamental respect has to be developed between the different groups… I believe we certainly have to do it in schools. There are many other elements within our society today that don't pay an awful lot of attention to respect for the different, for the other, whatever it happens to be.

Rev. Fr. Stefano Penna provided an interesting reflection between the past and the present. He referenced the time of his grandparents "when religion was extraordinarily ghettoized, when there was antipathy and antagonism between the various religious groups." He then noted that in today's Catholic curriculum "there is incredible attention and a concern for living one's faith in the context of a pluralistic society in which there are a plurality of religious and cultural expressions." You don't foster respect for diversity and plurality by creating "blob spaces where all particularity is vacuumed out, where people are not allowed to discuss their own particular visions or express in an explicit way their own convictions."

Sparsely Populated Rural Areas

Should shared facilities between public and separate boards be given more consideration in sparsely populated rural areas where it is sometimes difficult to maintain even one viable school?

Dr. Lyle Oberg stated that such consideration "absolutely has to be" given. If you have, for example, 200 students in a rural public school and 50 of them are Catholics, the start of a separate Catholic school would risk the viability of both schools. "I would hope that there is a modification on that… There's certainly a critical mass of students needed to provide adequate learning opportunities for the students." David Anderson emphasized that the *Presidents' Proposal* and the alternative process that ASBA put forward, resulting in changes to the *School Act* in the way separate districts are expanded, were intended to address the issue of declining rural populations. "Our process very much envisaged a need to consult, to engage that other community, and to embark upon dialogue about the impact of a new Catholic school or new Catholic program upon the existing facilities." The public schools are "always going to be on the outside looking in to some extent, but let's give them a vehicle through which they can express their views and concerns to the corresponding Catholic community."

David King suggested that the Catholic community "should step back and reconsider the push into rural areas" where the population is stagnating, aging, and the demographics are moving away from children.

> If I were an advisor to the Bishops or to the ACSTA, I would really urge them to think about whether or not there isn't some kind of comprehensive distinction that they can make between growing urban centres and many other communities in the province. If there isn't a comprehensive distinction that they can make, I certainly think that they should try to make a distinction on the basis of facilities in one community or another. I would really urge them to consider that.

Stefan Michniewski appeared to express a commonality of objective regarding rural Alberta. He believes that there is a lot of cooperation that goes on between most public and separate boards in this regard. Mr. Michniewski asked the question, "can we as Catholics, given our mission and vision, find a way that we can provide that [Catholic education] in some other way? Can we be creative about that?" He stated that it would always be a challenge because "our interest is to meet, under the legislation, the choice of parents." Can we provide Catholic education "and not have to result in some kind of damage to the public school?" Can the boards talk about it together and work towards a solution? "That's always been our goal. Doesn't maybe always come out that way, but I think it's the goal."

Rev. Fr. Stefano Penna spoke about focusing the problem where the problem belongs. "Sometimes people end up fighting with each other when they should be fighting with someone else." Perhaps instead the community should be talking to the government about being under funded. "This isn't a situation that we want to have… If you want us to continue to be a viable, diverse community out here, you've got to support us in different sort of ways." Members of a Catholic Christian community that are considering establishing a separate school "have a responsibility to be attentive to the community dynamics." But they are also responsible to the "bedrock presuppositions of

Catholic education," which are to "mainly bring forth the kind of empowered, socially committed, alive human beings that we have."

Kevin Feehan noted that the question becomes "how far can you compromise the philosophical belief by the practical considerations?" He facilitated the meeting of ACSTA board chairs on joint facilities. "The hardest issue was the issue that you've raised... The point was a fairly soft point... and it was where circumstances practically permit there should be a separation between the two parts of the school." It is Mr. Feehan's belief that, in essence, there is already a where-numbers-warrant provision in operation in the decision to provide separate schooling in rural Alberta. Because of the philosophical desire to have as much Catholic education permeating as many Catholic communities as possible, "a lot of the bigger towns end up subsidizing a lot of those smaller schools to a huge extent." He sited Waskatenau in Lakeland Separate District as just one example of that where Bonnyville Catholic schools support the economic burden of the new school in the smaller Catholic community, which "puts Bonnyville separate at a bit of a disadvantage compared to Bonnyville public" since both access the same resources. "One knows that that's going to be a fairly non-elastic formula because most people are not prepared to put up with too much of an economic burden."

Dr. Frank Peters stated "yes is the answer" to the question of shared facilities being given more consideration is rural Alberta. He notes that in the late 1980s he prepared a manual for establishing Catholic separate districts which pointed out that "just because you have the constitutional right to establish a separate school district didn't mean you should. There are social implications, social considerations that have to be dealt with in determining whether or not you ought to open a school in the first case." He pointed out that there are many Catholic clergy in Alberta who came from other provinces and didn't have the benefit of attending separate schools. "So you can't claim that the only possible way to obtain a solid grounding in your Catholic teachings or a solid upbringing in the Catholic faith is by means of separate schools." Dr. Peters referred to separate schools as "a constitutional blessing for the religious minority" but "not an absolutely essential ingredient." The whole question of sustainability, viability, and what is best for the community has to be considered. Religion is not "something that you do in the schools and then you work with everybody else for the rest of the time." In smaller communities, "the kinds of cooperation, collaboration, togetherness that can develop there can have its own religious dimension to it."

Non-Catholic Students in Catholic Separate Schools

Section 45(3) of the *School Act* (2000) states:

> A board shall enroll a resident student of the board or of another board in the school operated by the board that is requested by the parent of the student if, in the opinion of the board asked to enroll the student, there are sufficient resources and facilities available to accommodate the student.

This enables an open system in which separate resident students may attend public schools and public resident students may attend separate schools. Separate school jurisdictions are averse to sharing facilities with their public school counterparts, yet public resident students attend their schools. What is the appropriateness of non-Catholic students attending Catholic separate schools?

David King expressed a perspective that "separate schools should be required to make a public declaration that they are either *open* or *closed*." An open system would accept all students on request and accept all electors who wish to participate in the governance of the system while a closed system would accept only minority faith students and be governed only by electors of the minority faith. He believes that it is "highly unlikely that numbers sufficient to overwhelm the Catholicity of the governance would choose to be electors of that system." In the public system, "we believe that the involvement of parents as electors is vitally important." If the separate system is prepared to take non-Catholic students then it should be prepared to take into its electorate "those who say that they subscribe to your intentions and wish to be participants in the electorate."

Rev. Fr. Stefano Penna noted that he "saw this in Saskatchewan where you have non-Catholics that send their kids to Catholic school and then get frustrated because they can't have representatives on the school boards." In an open system, non-Catholics can attend the Catholic schools, but the students and parents must come knowing the ethos of the Catholic school. "Want to come, we're going to do our best to turn your kid into a Catholic and a believer in Christ Jesus. That's our job."

Dr. Lyle Oberg believes in parental choice and competition. Parents should be able to send their child to a Catholic school if they believe it offers a better education for their child. "I think choice and competition between the two school systems is one of the things that truly makes our school system great." David Anderson is also a big supporter of choice and competition. He asked the rhetorical question, "there should be two compartments that are watertight and no leakage between the two? I would never, never hold that view, either one way or the other." Where the education system does not have that kind of choice and competition, "the systems atrophy and die." Alberta's education system has choice and competition "by historic accident…and I think that's fabulous." He stressed that this is a personal view; "it's not an Association view at all."

Dr. Frank Peters noted that at the time of our Province's beginnings, "when a public school district was established you had to state whether it was a Catholic public school district or a Protestant public school district, which clearly identified the minority as well." Since then, "the Protestant district has *transmogrified* into that district that takes everybody and has for practical purposes lost its religious dimension." Many non-Catholics "who still want any kind of spiritual dimension to their schooling" find that what is offered in the Catholic schools is not "antithetical to whatever their particular religious beliefs are." Dr. Peters does not see any reason why the Catholic schools should not take non-Catholics. But he cautions that non-Catholic students and parents coming to the Catholic school "should be, and are generally aware of the fact that they are coming on the terms of the denominational school that is receiving them. And I find that to be quite acceptable." Stefan Michniewski is also supportive but noted that "as a religion teacher, it can create some difficulties cause teenagers are teenagers." Even when the parents want this dimension for them, some students are "at the beginning" with questions like "why do I have to do this" or "I'm not sure there is a God?" So, "if you've got a a lot of those students in there, it's difficult."

Kevin Feehen introduced a whole new dimension to non-Catholic student access to Catholic schools. He related that about four or five years earlier, the Imam of Edmonton sent out "what I would call a pastoral letter" in which he said "that he wanted all Muslims in Edmonton to attend Catholic schools" rather than public schools. The Imam's rationale was that "Muslims are one of the three peoples of *the Book*." The

Jewish people had the first book, the Torah or Old Testament, and the Christian people had both the first book but also the second book or New Testament. "Muslims were people who respected the first Book and the second Book and also had a third Book, which was the Koran." The Muslim religion "is based upon the need to follow all three Books and to honour them equally." But students only come to "Koran school" for an hour a week on Saturday mornings. "'We do not have any opportunity to teach you the first two Books.'" The Imam said that "'in Catholic schools you are going to be immersed in the first two Books, and we can add the third Book to it.'" Public schools "'cannot fill in the gap that you've got in your spiritual education in the first two Books.'" Mr. Feehan said, that "spoke to me to tell me that there are more than Catholics that want to be immersed in a denominational, religiously based, permeated education system." So if non-Catholics go to Catholic school because they fully understand that they are going to receive a fully permeated Catholic education then they "should be as welcome there as a Catholic student, many of whom are far less driven for a permeated Catholic education than those who are coming for that reason." But he cautions, "that should be the criteria…not because it happens to be across the street and you don't have to walk three blocks."

Opting Out of the Alberta School Foundation Fund

Under section 171(2) of the *School Act* (2000), the board of a separate school district, or a regional division made up only of separate school districts may opt out of the Alberta School Foundation Fund (ASFF) and collect their requisition directly from their municipal authorities. Currently, all separate jurisdictions have chosen to opt out of the ASFF. The ASFF is the provincial funding scheme that finally put Alberta's separate jurisdictions on financial par with its public jurisdictions, but still they choose to opt out.

Why Opt Out of the ASFF?

Opting out of the ASFF creates an unnecessary administrative process for municipalities and makes no difference in the total funding available to the separate jurisdiction. Why is it important for Alberta's separate boards to opt out of the ASFF? Are there other alternatives?

Rev. Fr. Stefano Penna spoke of enabling people to feel connected. "Catholic education looks always for *carriers of meaning*, tangible practices that transform the way in which a person experiences ownership, participation in the world, participation in the community." People's money, including property taxation, "is a very clear conceptual and real connection with what's happening." Such a direct participation empowers people. "I think it's amazing and wonderful that the Alberta community…allows them to have that kind of living connection through what might to us seem a waste of time."

Stefan Michniewski noted that "the fiscal equity reality is excellent and fits with the dual system and should be there" but stressed the significance of the constitutional right. The unanimous decision of separate boards to opt out was based on the argument that "taxation is… the cornerstone of our right constitutionally." It "connects us to electors and it's a way that we can maintain the Catholicity through funding within our schools." The "maybe seventy percent" who don't have children in school "have a way of being connected with the system through their taxation dollars." Mr. Michniewski states "we really believe Catholic education is good for all of us, the whole community, not just Catholic kids – all of us." Supporters want to make sure it continues "and the right's there to do it. It's historical and we like that."

Kevin Feehan stated that his "recommendation in 1994 to ACSTA was that all of the boards should not opt out. They should be in the ASFF and that that was the most practical thing to do and it didn't make any difference from a monetary point of view." His recommendation was "defeated by the unanimous vote of the board chairs at ACSTA." He noted that Catholic schools have a great difficulty communicating with the Catholic population because Catholics are "not a visible minority…every race, colour, type of person could or could not be Catholic." By at least having the property tax lists, they have a means of identifying Catholics in their jurisdiction "so that they can communicate with them, …so that they can invite them to meetings, so that they can try to get them involved in the school system when they normally wouldn't be involved because they don't have kids there."

Separate boards are also concerned about the consequence of not exercising what is believed to be a right to directly tax their supporters. Kevin Feehan stated that he keeps reassuring the separate boards that "a constitutional right given is a constitutional right whether it has been exercised or not." That is the legal answer, but he keeps hearing back the practical answer of "that which we do not use, we forget about. Whether or not it's there, whether or not it's legally enforceable, we forget about it." We lose these rights "by loss of memory, not by loss of law."

David Anderson stated that the concept of sharing the tax base among school jurisdictions "was laudable" and "was absolutely a move in the right direction." He noted that "we had an unconscionable situation existing in this province with the local tax base varying so much… As a consequence the quality of education varied depending on where you lived." But Mr. Anderson is also "very supportive of the right of school boards to tax" and believes that public boards should also be able to opt out of the ASFF. "That right was removed through provincial legislation for public school boards in 1994, and I think it's much to the detriment of public education in this province." He is supportive of the concept of pooling and the equalizing of revenues available to boards but does not "like the scheme adopted that removed the power to tax." He stated that ASBA encouraged its separate boards to opt out of the ASFF "even though it would make no practical difference to the amount of money they had. We just felt so strongly of the democratic principle."

Dr. Frank Peters stated that separate boards put forward an argument for opting out of ASFF "that I find to be somewhat flimsy…that it's important for them to be able to identify who their supporters are." Opting out doesn't identify all of the separate supporters in any event. "Supporters of the Catholic school system – legal perspective – are all adult Catholics living within the jurisdiction of the school system. They don't have to be ratepayers." When asked why it might be important for separate boards to opt out, Dr. Peters replied, "no idea. I wasn't in favour of it initially. Don't see any reason for it today." Dr. Lyle Oberg believes separate jurisdictions are "just making a stand that they can do it under the *Constitution*. That's the only reason. It in effect does nothing for them." He believes they should look to the Catholic churches to determine their supporting community. "Indeed, I think most churches keep records of that."

The *School Act* requires property owners wherever there is both a separate jurisdiction and a public jurisdiction to declare their property assessment based on whether they are or are not of the Roman Catholic faith. That is a requirement whether or not that separate jurisdiction has opted out of the ASFF. It is necessary to maintain those tax rolls both in case a separate jurisdiction should opt out of the ASFF at a future time or in case either the public or separate jurisdiction should successfully pass a plebiscite for a special school tax levy. Therefore, separate jurisdictions would have their assessment roll as a means of identifying at least those supporters of the Catholic separate school jurisdiction who own property even if they did not opt out of the ASFF. From the ratepayers perspective, the argument is reduced to a psychological one of knowing that their tax money is going directly to the local separate system, rather than coming back to it, with top-up, through the provincial government. The argument of exercising a perceived right so that it is not forgotten seems to be closer to reality.

David King drew an analogy with the School Foundation Program Fund (SFPF) that proceeded the ASFF and, in that, identified an interesting alternative for getting separate jurisdictions to be fully part of the ASFF. The SFPF was predicated on separate school boards being out unless they opted in. Separate boards were all part of the SFPF, of financial necessity, from its inception in 1961 "and clearly there was no practical difference for them post 1994." He believes separate boards are "treating it as a placeholder in the event that the government changes or the position of the government changes in the future" noting that it "represents their position on a constitutional right." David King thinks that participation in the ASFF is to be accomplished exactly the way it was under the SFPF. Change the legislation so that separate boards are initially out of the ASFF, without the top-up provision, unless they opt in, setting up "a situation in which the choice lays with them." He described this situation as an issue of protecting *autonomous control*. "The way the ASFF is set up, autonomous control requires a resolution that they opt out. They have to pass that resolution." The proposed change would preserve autonomous control when making the choice to opt in. "Conceptually, it's always been difficult for me to wrap my head around a situation in which, if you opt out, there is a provision that says we will top you *up*, even though you are opted *out*."

Separate boards could not afford not to opt in to the SFPF, since all of the basic instruction grants were structured as part of the SFPF. Similarly, under this alternative, they would not be able to afford not to opt in to the ASFF, since each board receives some level of top-up from the province in order to achieve equal ASFF dollars per student. Unlike the present configuration where exercising their perceived constitutional right appears to necessitate them opting out of ASFF, under the alternative, separate boards would exercise their constitutional right by opting in to ASFF to fully access all available funding, just as they did with the SFPF for over three decades.

Ontario's Bill 160

In 1997, Ontario's Bill 160 centralized property taxation power for education in the hands of the province. In March 2001, the Supreme Court of Canada found that the authority to tax supporters is not a right or privilege with respect to denominational schools protected by section 93(1) of the *Constitution Act* (1867). Section 93(1) protects the right to funding for denominational education, not the specific funding mechanism, provided it results in fiscal equity with the public system. Equality of educational opportunity with the public system is the critical factor. In view of this finding, should the province of Alberta simplify the legislated process for funding schools in Alberta and remove the option for separate school boards to opt out of the ASFF?

Kevin Feehan pointed out that the precedent legislation in Alberta is different than Ontario and believes that the Supreme Court would have come to a different determination for Alberta. It is his opinion that the constitutional right for Alberta's separate schools to tax continues to exist. "The decision in *Bill 160* was clearly based upon the *Scott Act* in Ontario and the *Scott Act* had two provisions in it." It had both the equity provision, section 20, and the right to access the property tax provision, section 7. "What the Supreme Court…clearly held in *Bill 160* was that…the right to access a property tax base was part and parcel of equity." In Alberta, "rather than having an Act that has wording that says one is an example of other, we have two completely different statutes doing two different things."

Section 17 of the *Alberta Act* (1905) is referenced in Chapter One, page 29. Both Chapter 29, the *School Ordinance* (1901), and Chapter 30, the *Assessment and Taxation in School Districts Ordinance* (1901), are preserved in section 17(1). Kevin Feehan's prime point appears to be that section 17(2), the equity, non-discrimination section, references only Chapter 29 and so the link between the entitlement to equity and the right to tax is separated in Alberta rather than being linked in the same statute, as it was in

Ontario. Although Chapter 30 did deal with the property tax assessment base, it may be inappropriate to conclude that the right to tax is not part of Chapter 29, as captured in section 17(2). Sections 41 and 45 of the *School Ordinance* (1901), Chapter 29, state:

> 41. The minority of the ratepayers in any district whether Protestant or Roman Catholic may establish a separate school therein; and in such case the ratepayers establishing such Protestant or Roman Catholic separate school *shall be liable only to assessments of such rates as they impose upon themselves in respect thereof* (emphasis added).
>
> 45. After the establishment of a separate school district under the provisions of this Ordinance such separate school district and the board thereof shall possess and exercise all rights, powers, privileges and be subject to the same liabilities and method of government as is herein provided in respect of public school districts.

Section 7 of the *Scott Act* (1863), the right to tax section, states:

> 7. The Trustees of Separate Schools forming a body corporate under this Act, *shall have the power to impose, levy and collect School rates or subscriptions, upon and from persons sending children to, or subscribing towards the support of such Schools*, and shall have all the powers in respect of Separate Schools, that the Trustees of Common Schools have and possess under the provisions of the Act relating to Common Schools (emphasis added).

Although the wording is structured somewhat differently, the core content does appear to be almost identical. Separate schools are able to *impose rates* on their supporters and have the same powers as public schools. Is the difference in wording sufficient to make Mr. Feehan's argument? Only the judiciary knows for sure.

Rev. Fr. Stefano Penna offered a more philosophical approach. "Parity of funds is one thing, but there has been a constant sense in the Catholic conceptuality of what it means to support Catholic education." He believes that it is essential to maintain that "direct control and linkage" in the practice of property taxation "so that we are responsible to the Catholic taxpayers and to the larger community to do proper things."

Stefan Michniewski affirmed Kevin Feehan's belief that "the right to tax in Alberta exists. We think it's important." He then notes that ACSTA "advocated that we would be very comfortable with public boards having some rights to tax for the same kind of reasons—to support the community so there's understanding of what they're doing in their schools." David Anderson supports that approach. He noted that "when we talked about the issues that an ASBA had with the ASFF," the solution espoused was "giving public boards the same rights that separate boards had rather than taking the rights of separate boards down just because public boards don't have that right."

David King concurred with the proposal to remove the option for separate schools to opt out as a result of the findings in *Bill 160*. But he believes "that school boards are a local general-purpose government," that they "have a mandate, which does go beyond the program of studies and the curriculum," and should have some discretionary resources for a larger mandate. "But personally, I would be happy to see them eliminate the distinction between public and separate boards with respect to education funding."

Dr. Frank Peters stressed equity with the public boards:

> If you are going to look for anything by way of a right for separate schools in terms of funding, it would be that you receive equitable funding vis-à-vis the funding that is available to public boards – nothing less, nothing more… I am very favourably disposed towards the pooling of that type of wealth, indeed the pooling of whatever kind of funding. I've argued a long time that boards don't lose anything as a result of not being able to collect their own taxes.

Dr. Lyle Oberg brought a practical political perspective, noting that "you certainly could" eliminate the option to opt out, "but in essence it's creating a political issue and a political problem when there's no gain." There is "some bureaucracy involved" and it could be simplified, "but if it is important to the individual person, the individual church, and it is not causing a huge amount of hardship… quite simply, it's not the hill to die on and it's not a hill to fight."

Separate Electors and Choice

Under the traditional method of expanding separate school jurisdictions one four-by-four public district at a time, separate electors vote whether to establish the separate district or not. Where a separate jurisdiction is established, all separate electors become residents, electors and ratepayers of that separate jurisdiction. All of the separate electors are bound by the decision of the majority of that religious minority.

The Alternative Method of Expanding

Under the new alternative method for expanding separate jurisdiction boundaries, a decision to expand is made by those outside of the local community. Based on an expression of interest by at least some members of the local Catholic community, it is the nearest separate jurisdiction board that makes the decision to request the Minister to expand their boundaries. The local separate electors have no vote or ability to choose to remain within a single public system. What is your opinion of the appropriateness of the alternative method?

"I don't like it," Dr. Frank Peters stated. "Coming as I do from the west of Ireland, you can understand a certain kind of hesitance about colonial expansionism." He believes that it is critical that these decisions are made at a local community level. "The decision isn't going to be made in St. Albert to push off out into Bon Accord or Gibbons." Dr. Peters sited the example of the Barrhead area where the establishment of a number of separate districts was proposed. The Superintendent of the public school system offered to work with the separate electors to accommodate their needs within the public system, saying "'we're doing it for the Christian Reformed Church here; we'll do it for you.' And they did" and the majority of the establishments were voted down by the separate electors "because they were able to find a local community decision." Dr. Peters talked about the rigors associated with the traditional process where proponents of establishing a separate district must stand up in the community and be scrutinized. Under the alternative process, you can "do an end run on that." In areas where establishment is difficult and the political process has lost out, "the loser doesn't have to take his lumps anymore. The loser can…have some other group come around and do it. It strikes me as being very dangerous." Dr. Peters concluded the point with the following advice:

> I think that we might, as a separate school group in this province, wake up to realize that there isn't an overwhelming amount of support for its continued existence. So I think it's important not to piss off all these other rural communities, because the rural lobby is a strong rural lobby in the Legislature. And the communities I think will be quite willing to comply, to support, to cooperate as long as the separate school communities are seen as being cooperative.

David King is also not a fan of the alternative method, describing it as "undoubtedly illegal, unconstitutional and politically unwise."

> …the law says that if there's education anywhere it's going to be a public school system in the first instance. So it seems to me that all land in Alberta must be visible to the public school system. But it is not equally apparent to me that all land in Alberta is visible to the separate school system. I would say that there's a good argument to be made that land is invisible to the separate school system until the people on the land have first of all set up a separate school district, because I cannot imagine that section 239 [of the *School Act* (2000)] exists to be used to identify who is the minority and decide without their involvement or consent that they are going to be part of a separate school district. And my question would be, if that has always been a plausible interpretation, why haven't we used it for a hundred years to expand separate school education?

David Anderson likes the opportunity within the alternative method for public and separate boards to work together on expansion issues. "It provides a correction to the process of leaving that whole issue solely in the hands of the minority electorate. There's a process that's designed to provide a window for the outside community…to express their concerns and have them responded to." The alternative method enables the ideal where "a public board and a separate board go hand-in-hand to the Minister and say, 'we've addressed our concerns, let this one proceed.'" Mr. Anderson then referred to the *Presidents' Proposal* as a "valiant attempt to address those issues" surrounding separate jurisdiction expansion and regrets its loss.

> I really view it as a huge failure on behalf of the three associations that we were not able…to move that process forward. I really view it as a paler success that we were able to move forward a proposal to ASBA, which picked up many of the elements of the *Presidents' Proposal* while it did not envisage the same sweeping scope of changes that would have put this issue to rest for some number of years and remove some of the tensions that can exist in the expansion process in Alberta. So it's too bad. There was a lot of good will, a lot of effort. Not surprising, I guess, in hindsight because some of the differences are very profound… It was a real failure of will, a failure of leadership on all our parts, I think, to have seen that *Presidents' Proposal* not succeed.

Stefan Michniewski agrees with the benefits of consultation. The ACSTA was looking for a method of providing "Catholic education where parents wanted it for their children in a way that was not as divisive" as the traditional process. "The beauty of the alternative method, even though it could create some friction, [is that it] allows for the community and especially the public board to raise some questions that could be worked out, and we've actually had that happen." The Minister then receives "a full reporting of dialogue that took place within the community, between the public and separate board."

If the Minister "believes that due diligence was done," then he will sign off on the expansion.

Rev. Fr. Stefano Penna talked about conversation that builds up communities and Catholics taking care of the larger Catholic community. "I would hope that as they approach that system, the legal dimensions of making those decisions do not exclude the kinds of proper conversation that end up building up communities." Father Penna noted that "laws teach." We need to be very careful about enacting laws that "teach communities how to converse in a negative way." Instead, we need "good, proper life giving forms" of communication "that require you to look at the face of another person, and not just have a vague principle that says, 'I don't care about you, here's the law, you fit into it.' That's much more a dialogue. That's our principle." Father Penna referred to it as "a good thing" that "the Lakeland Catholic community made that decision to provide for the brothers and sisters" in the Waskatenau area "at a cost to them." He notes that "it isn't about money." The Catholic education community "is growing to discover…the kind of mutual support that isn't just premised on self interest in a little group… Cause if they're not doing that, then they're not holistic Catholics."

Kevin Feehan explained his position that the precedent legislation provides two alternative ways of expanding the boundaries of separate school jurisdictions in support of his belief that the alternative method of expansion is constitutionally valid.

> I think that there are many constitutional rights that were vested in Catholics and they've never been enumerated and I don't think they ever should be enumerated. But I think that you can identify two of them and they are two different rights with a complete wall between them.

One of these two rights is "the right to formation of Catholic school districts," the traditional four-by-four process set out in sections 41 through 45 of the *School Ordinance* (1901) and the other is the "constitutional right to expand that Catholic school district" under section 48. "The criteria for expansion are not the criteria for formation." The two-point test under section 48 forms the criteria for expansion. Mr. Feehan next addressed the issue of whether public school concerns should be addressed in the section 48 test of whether proposed changes are for the general advantage of *those concerned*. His advice to the Minister is that, politically, he "absolutely" should "take into account public school points of view in the expansion…because that's the best political, the most broad liberal way to look at the provisions." He then added, "in fact it's not the legal answer, but it's the right political answer."

Dr. Lyle Oberg looked back on the alternative process for expansion and offered a different vision. "If I had it to do retrospectively and if we could do it – constitutionally we can't, but if we could do it – the simplest way would" be to create coterminous public and separate boundaries across the province. "I can say that now because I'm not the Minister."

> And hence, this whole conversation realistically would not be occurring… That's where there are issues in this whole process is the expansion of the boundaries, where in reality, why don't we just expand them out to the whole province and then these issues in communities would not occur. And I think we have to recognize that. We're not attempting to infringe on anyone's constitutional rights, but on the other hand, …we're trying not to be divisive in small communities, not to tear apart these communities, not to pit Catholic against non-Catholic. And unfortunately, the history of the four-by-four vote was exactly that.

Individual Choice vs. Collective Choice for Separate Electors

In the Province of Ontario, members of the minority faith establishing a separate school district have a choice to remain a resident of the public school authority. In Alberta and Saskatchewan, that choice is not there. All members of the minority faith become residents of the separate school jurisdiction. The alternative method of expanding separate school jurisdictions as initially envisioned in *the Presidents' Proposal* contained individual choice for separate school electors in Alberta.

On January 27, 2005, the separate electors in Didsbury School District voted to establish a Catholic separate school district. Mr. Roy Brassard, Chair of the Chinook's Edge School Division (CESD), is a separate school elector and resident of the Didsbury district. When the Minister signed the Ministerial Order establishing the district as part of the Red Deer separate jurisdiction, Mr. Brassard became disqualified from remaining as a trustee of the public board.

> Brassard would legally automatically become a member of the Catholic School District, every Catholic in the area would. Brassard would then not legally be able to stay on the CESD board. "I don't intend to step down," said Brassard. "They would have to take me down" (Collins, 2005, January 5).

> Brassard…would either have to step down or renounce his Catholic faith. "I have no intention of stepping down, whatever that means," said Brassard (Collins, 2005, February 2).

Mr. Brassard continues to sit on the board of the public school division and serve as its Chair. The same situation developed in March 2000 when a separate district was established in Canmore district and both the Chair and one other trustee became disqualified from remaining on the board of Canadian Rockies Regional Division. Neither of those individuals stepped down either but chose not to run for trustee again in the October 2001 local elections.

Should individual separate electors residing in a separate jurisdiction have the right to choose to remain a resident of the public school jurisdiction? Why?

Rev. Fr. Stefano Penna supports the traditional collective choice and talked about the obligation of Catholics to the Catholic community. "We understand that one of our obligations as Catholic Christians is that we belong to a community, which thereby that belonging circumscribes and transforms the way that we understand our individual rights." Part of that obligation, "that's established in church law and…church teaching," is "to further the particular gift of forming future generations in the faith of the Church." Father Penna noted with regards to the Catholic Church, "we're not a democracy." Like any family, sometimes family decisions are made and a few members do not like the decision. "But you've got a choice, and it stinks sometimes." A community is well served "by people who are able to surrender …their own kind of exercise of power to the discernment of the larger community." People like Mr. Brassard "are going to be invited and challenged to further the Catholic permeation of society through the vehicle that the Catholic Church has considered the best thing that we need him as a person to do." When it comes to education, "we need people with the talents and leadership of a Mr. Brassard to get involved in Catholic education, because that's our way of understanding…the larger good." Father Penna stated that accordingly, "the Alberta law is much more consistent with Catholic understanding of the responsibility of Catholics to participate in their system than say the Ontario one."

Dr. Frank Peters supports the idea of individual choice and addressed the reluctance of the ACSTA to support individual choice for separate electors if it means a constitutional change by amending the *Alberta Act*.

> Catholic system doesn't have to agree to the constitutional change. I think that somewhere or other you've got to assume some sort of trust at some level here. …It seems to me that anything good that has happened here in the past ten, twelve years is because we're big on choice. …I think if we were clear what the specific nature of the change would be, the Catholic community needn't have a say in this at all. This is change that the provincial government could craft, present for information, present for feedback, if you like, to the Catholic community through the ACSTA, and go with it… And it might waken the Catholic community up to the fact that they'd better be collaborative in this thing. You can't just say we have a constitutional right to hold on to the status quo. They don't have a constitutional right to hold on to the status quo. They have a constitutional right to hold on to the status quo as long as the provincial government wants to allow them to hold on to the status quo. That's all. Section 43 of the '82 *Constitution Act* is really simple to kick-start.

David Anderson believes in the principle of human choice and referred to the concept of individual choice for separate electors as "an excellent idea." While parents have the ability to send their children to school in either the public or separate system, "if you're a Catholic and you want to remain an elector and have the ability to run for school trustee in the public system, you do not have that choice… I think that's fundamentally wrong."

Dr. Lyle Oberg thinks we would be better off in Alberta with individual choice for separate electors. But he pointed out, "that was what I put forward" under the Bill 16 amendments "and it became a hill to die on for the Catholic system, and so we lost it." Dr. Oberg stated that "the issue has always been an inherent distrust of government in the Catholic education system." Dr. Oberg noted that he repeatedly affirmed that, because "two school systems made both systems better," there was no way that this government would look at doing away with separate schools as other provinces had, but apparently could not overcome that trust issue.

Stefan Michniewski stated, "I think we have a constitutional system that's working for us… I would not support tampering with the *Constitution*, at all." However, he appears to recognize the merits of the concept of individual choice for separate electors, "if we could find a way to provide that" without opening the *Constitution*.

Kevin Feehan agrees that it would be a reasonable thing to do, but believes that it would be suicidal for the Catholic population to support a constitutional amendment:

> Philosophically, my liberal libertarian side tells me that if somebody doesn't want to be in the separate school system, they shouldn't have to be in the separate school system. They should be able to get out. …I would never ask anybody to deny their faith on these issues. I think that's a horrible thing. …I think that if we could do that without constitutional amendment, then it would be a very reasonable thing to do. But I don't know of a way to do it without constitutional amendment. And I think that getting into constitutional amendment in this area is a non-starter politically. And I think that the Catholic population would be suicidal if they encouraged a *Constitution* amendment, because who knows just how far it goes once you open the door. It may go a lot farther than simply allowing Roy Brassard to sit on the public board. It may go into a unitary school system in this province like British Columbia or Manitoba…
>
> I have no doubt that if you did something that was blatantly unconstitutional that there's somebody there who's going to challenge it for some reason. I don't think that it's necessarily PSBAA, by the way. I think it may be any group of persons who are interested in the integrity of the *Constitution*…it may be the Canadian Civil Rights group, it may be some dissident Catholic parents who don't want Roy Brassard to be the Chairman of the public board. …we live in a society that is sufficiently litigious that if you ever did something in the *School Act* which was blatantly non-constitutional, I think you'd have lots and lots of lawsuits and I don't think it would be necessarily the big organizations. And all it takes is one person.

David King sees an opportunity to change to individual choice for separate electors without a constitutional amendment. He noted that the ACSTA says that it does not want to coerce individual Catholics who are supporters of the public school system. "Why not just amend the *School Act* to give individual members of the minority the right to choose to be supporters of the public school system and see whether or not it gets challenged." Someone would have to argue that giving choice to an individual separate elector "detracted from minority group rights, and I'm not sure that they would." Mr. King pointed out that the PSBAA position "for years has been that we would like to see the *Schmidt* decision undone" to enable individual members of the minority faith to "have the right to choose to be supporters of the public school system. And if the government moved in that direction with amendment to the *School Act*, we would not challenge it." He added that "we understand and support the proposition" that this right "should be available to members of the minority faith who want to move to the public school system with out being mirrored from members of the public school system who want to move to the separate school system." If large numbers of the minority moved to the majority, they could not overwhelm it, but if large numbers of the majority moved to the minority, they could overwhelm it. "So our position has always been that we accept that a one-way door is legitimate in the circumstances."

Re-examining the Constitutional Guarantee

Constitutional minority religious education rights for Protestants and Roman Catholics were granted at a time when those were essentially the only categories recognized. Two of the five provinces with such constitutional rights, Quebec and Newfoundland, have done away with them through a constitutional amendment. Journalist Lois Sweet in her 1997 book, *God in the Classroom*, said it is time for "re-examining the issue of the constitutional guarantee for public funding to Catholic schools in light of today's new multicultural, multi-religious reality" (Sweet, 1997: p. 16). How would you respond to this position?

David King supports the proposition that Catholic schools should be part of the larger public system. He noted that PSBAA encourages member boards to offer alternative programs under section 21 of the *School Act* (2000), which may be a "program that emphasizes a particular language, culture, religion or subject matter." The association is supportive of what Edmonton Public has done with Christian, Jewish, and Muslim based schools or Pembina Hills Regional Division has done in Nerlandia for the Christian Reformed community. Mr. King believes, for example, "that Edmonton public could offer a Roman Catholic alternative program…that could meet all of the expectations of the Archbishop of Edmonton save only for a separate school board and a superintendent." The governance issue could be addressed through "faith cohesive wards" and a unified board with "a management committee for some schools but not for others." The model for this system within a system is already provided in the *School Act* (2000) for Francophone Regional Authorities where under section 255.5(2) "the separate school members of a Regional authority have the responsibility and authority to ensure the rights and privileges with respect to separate schools." This variant is "apparently acceptable to the Roman Catholic Church." The model should be considered for

Alberta's rural areas at the very least. Mr. King has "never been a big believer that the cost savings would be significant enough" to justify this model. The thing that is most attractive about bringing Catholics into the public school system "is that it holds our feet to the fire on the need to respect faith." Mr. King believes that "kids are better educated in a heterogeneous environment" and thinks "the community is stronger when everybody is involved in the same common tasks." He dislikes "the proposition that some of us in this community go in one room to talk about the education of our kids and others of us go into another room." We don't really concern ourselves about what is happening "over there because someone else is looking after it." Instead, a community "must be diverse and inclusive." It has to throw people together "and challenge them to figure out how to live together."

Dr. Lyle Oberg believes in the advantage of two major school systems. A large percentage of our population is Catholic. "There's a lot of parents who want their kids to have religious education in school. And I think that that's a right that we have to value." He also stressed that "it's the competition between the two systems that ratchets up the level of each of them. And I think it's very important to do that." Dr. Oberg noted that he "would feel much less contented" about the educational situations for other faiths "if there wasn't other options available" but "there are a lot of other options available for them." He concluded, "two systems are extremely beneficial. I think if you put everyone under one system, you would see an increased level of mediocrity as opposed to an increasing level of excellence."

David Anderson is also a strong supporter of competition within the larger public system. "It benefits us all to have such a vibrant, diverse public education system…the competition is fabulous." He believes that the objective of our system has progressed far beyond just the protection of a religious minority. "You've got systems that want to cater to you and do the best job possible for you as a student or you as a parent because they want you as a product of their system."

Stefan Michniewski recognized existing opportunities for other groups within fully funded alternative programs and talks about the evolution of our understanding of minority religious education rights. He referenced the example of the Jewish School in Calgary functioning as an alternative program within the Calgary Catholic system. Mr.

Michniewski referred to "the concept of the Constitution being a living, breathing tree" and notes that, from a theological point of view, this is "a very Catholic way of thinking." It allows our understanding of minority education rights to grow and evolve "as circumstances come along." He stated that Kevin Feehan, "representing our position before the Supreme Court, has been successful in basing a fair amount of his argument on the living, breathing tree." The courts have acknowledged "that it's better to let it grow. Now David [King] would say, 'yeah, but that tree's growing across the fence into our lake.'"

Dr. Frank Peters is also supportive of two major school systems. But he suggested we need to revisit the original purpose of the separate school legislation and quit living in the shadow of the United States. Dr. Peters stated that the idea "that we're going to have a monolithic unitary single non-denominational education system in this country" is the result of "sitting under the shadow of Mount Rushmore." Other than the United States, "there isn't another country in the western world that has a monolithic educational structure and the silly kind of a divide between church and state that they try and impose." He noted that supporters of a unitary system have "completely lost sight of the reasons for the introduction in the 1700s of the kind of separation of church and state" where there was a fear of the state "establishing a particular religion and persecuting members" of other faiths. "Look around, what the hell is happening right now? There's a rise of a terribly narrow bitter fundamentalist religion, in terms of the state" trying to "impose a secularism that isn't terribly tolerant of anything other than secularism." Dr. Peters stressed that we "need to revisit…the generosity and understanding and willingness to accept others that was present in 1867" and push that forward "so that it embraces the multicultural, multi-religious Canada that we have today."

Kevin Feehan believes that, where numbers warrant, every child should be able to access a religiously permeated education. "If I had my utopia, I would like to see every religion be able to permeate their education system." He referred to education as "the building block of humanity in every way… and I think it must be spiritually as well." Mr. Feehan stated, "the thing about the Catholic school and the Catholic Church is that it is a pretty monolithic block. A Catholic in India and a Catholic in Canada is really the same denominational person." Catholics also represent a significant proportion of our population. He noted that, from a practical perspective, numbers do not allow "for there to be a lot of religious schools for persons of religions without a monolithic view." But, "if there is another group where we could make it work because their numbers warrant," then we should do that.

Rev. Fr. Stefano Penna believes Canada's constitutional provisions provide an environment that encourages the practice of diverse religions to the ultimate benefit of society as a whole. In an analogy to Lois Sweet's proposal, he stated, "yeah, I mean a good way of getting rid of poverty would be to wipe out Africa. Then we'd have less poor people in the world. It is a way of flattening the field." In applying the analogy to Canada's separate school rights, Fr. Penna added, "we've got to find ways to promote multiple faith expressions in society so therefore we'll take away the protection, any protections of any religions…I think that's a silly comment" and "a highly flawed sort of basic." He pointed out that "nothing would be gained for a society that's seeking to promote a plurality of religious expressions, which includes the beneficial practice of establishing religious minority schools to be part of the mosaic of a society, …by removing the one precedent." Our society says, "bizarrely to Americans, frankly out of this world to the people of France, completely unknown to the Arab folks that come here, that a minority has a right to establish an educational institution." Fr. Penna expects that "other religions are going to say, 'we want the Catholics to have that right cause that's our way into establishing our own rights.'" But there will always be some people who will say that their view of society and education is anti-religious. "They're going to argue, 'get rid of it.' And I say, thank God for the *Constitution*."

Conclusion

What common understandings, or areas of near consensus, if any, can be gleaned from these opinions and beliefs and what areas of impasse do there appear to be?

There appeared to be a general understanding for the need for Catholic schools to be *separate* and that there is ample opportunity for children to mix with others within the community in a multiplicity of activities outside of school. Although David King would prefer students from all different backgrounds to rub shoulders in a single public system, Dr. Frank Peters pointed out that it is not enough to simply put students from different backgrounds in the same school. You must do something specific with the curriculum to inspire in our young people an appreciation of the diversity in Canadian society.

There would appear to be a near consensus on the need to give more attention to alternative facility solutions in sparsely populated rural areas. That additional flexibility is needed to meet the needs of Catholic parents to access Catholic education for their children without damaging the viability of the small rural public schools.

There was generally strong support for the concept of parental choice. Non-Catholic students should be able to attend Catholic schools if that kind of spiritual grounding is what parents want for their children and they are prepared to accept the Catholic ethos that comes with it. David King would prefer a condition that if you take the non-Catholic student, you must be prepared to take the associated non-Catholic parent as a resident and elector. However, later in speaking positively about individual separate electors having the choice to remain a resident of the public jurisdiction, Mr. King recognized that a one-way door is legitimate in that a mirror-right allowing public electors the choice to become separate electors could, theoretically at least, lead to the majority overwhelming the minority.

There was no consensus on the need for separate boards to opt out of the ASFF. The majority of the supporting logic involves the need for separate ratepayers to make the commitment to separate education by declaring their assessment in support of it and the need for separate jurisdictions to access their assessment roll as an assist in identifying their supporters. Those declarations and assessment rolls happen whether the separate jurisdiction is opted out of the ASFF or not. The greater logic seemed to be the visible exercise of a perceived constitutional right so that it is not forgotten about by either the separate systems or the provincial government. The concept that separate boards should have been given the same choice that they were under the SFPF is an interesting one. Instead of being presumed in the ASFF unless they exercise their right to opt out, they would be presumed out of the ASFF until they exercise their right to opt in, to access their top-up to equal dollars per student with the public system under the ASFF.

There was no consensus on the applicability to Alberta of the Supreme Court's decision in the *Bill 160 Case* that separate districts need not have been given an option to opt out of the ASFF. There was also no consensus on the appropriateness of the provincial government eliminating that option and certainly no apparent political appetite for it.

There was no consensus on the merits or legality of the alternative method of expanding separate school jurisdictions. That probably explains why there is pending litigation on the matter. There was consensus on the merits of local consultation between public and separate jurisdictions over the issues associated with expanding separate school services.

There appeared to be a near consensus on the benefit of having two major school systems, one public and one Catholic. Competition between the two may contribute to the level of excellence Alberta has experienced while one unified system may lead to mediocrity. David King would prefer that minority religious rights be guaranteed at the school level as an alternative program within a single public system, perhaps supported by a board within a board, as is done for francophone authorities, at least outside the major urban centres. As a more restrictive minority right, this alternative would likely require a constitutional amendment and would accordingly not be politically viable. Since rural Alberta is the primary target, it appears to be another angle on protecting the viability of small rural schools that could perhaps be better addressed by the near consensus on alternative facility solutions.

There appeared to be a near consensus on the merits of the concept of individual choice for Alberta's separate electors to remain residents of the public system, *if only* it could be done without a constitutional amendment. There was, of course, disagreement on the necessity for a constitutional amendment to accomplish individual separate elector choice. Some separate school champions lack sufficient trust in the provincial government to ever entertain the remotest concept of updating the century old constitutional provisions.

Two alternatives that did come out of these discussions are of particular interest. First, Dr. Lyle Oberg lamented our constitutional inability to simply expand out the separate jurisdiction boundaries to cover all the areas served by the public jurisdictions as a means of eliminating any further issues with either the traditional or alternative methods of expanding separate jurisdiction boundaries. It is interesting that Dr. Oberg recognized the constitutional problem with such an expansion, but had no trouble signing an Order that added most of two counties to the Lakeland separate jurisdiction under the alternative method. This concept is essentially what was initially proposed by the ACSTA in their *New Vision* document in February 1999. It is also essentially the proposal put forward by David King in October 1993, except that in Mr. King's proposal separate electors in the area of expansion would be required to vote on the question in a plebiscite. This had been the model used in 1980, when Mr. King was Minister of Education, to create the Lakeland public and separate districts, both coterminous with the boundaries of the former Bonnyville School Division.

Second, David King proposed that we accomplish individual choice by amending the *School Act* only, as was put forward in Bill 16 in May 2001, and see if it gets challenged in court. Mr. King stated that the PSBAA supports the proposition of individual choice for separate electors and that if the government moved to amend the *School Act* in that way, "*we* would not challenge it." It is interesting that Mr. King would proclaim such a commitment when the PSBAA withdrew its support of the *Presidents' Proposal*, that included individual separate elector choice, in no small measure because the province and the other two trustee associations were not prepared to go for a Supreme Court judicial review of the proposal in relation to the *Schmidt Case*.

At the meeting of the three trustee association Executive Directors held March 3, 2000, senior Alberta Justice lawyers advised that there is no prohibition against making constitutionally protected rights less restrictive and that individual choice was potentially a less restrictive, higher level of choice than the collective choice of the majority of the minority under the traditional process. Alberta Justice expressed the opinion that an alternative process for extending separate jurisdiction boundaries based on individual choice of separate electors had a reasonable chance of withstanding any future constitutional challenge. Perhaps Dr. Oberg's wish to just be able to expand out the separate boundaries to, shall we say, be coterminous with the current separate school regions could be accomplished as long as it was accompanied by an amendment in the *School Act* implementing individual choice for all separate electors in Alberta. This is an intriguing possibility that may be more legally defensible than the current alternative method of expanding separate jurisdictions.

CHAPTER FOURTEEN

PERSONAL REFLECTIONS *and* RECOMMENDATIONS

I received my schooling, an embarrassing number of decades ago, in the United States. This study of minority religious education rights in Alberta and elsewhere in Canada has given me an appreciation of the cultural distinctions that are at the core of these two neighbouring nations. Canada originated from two founding cultures based on religious and linguistic differences. Protection for the religious minority, whether Protestant or Roman Catholic, to educate their children within the doctrines of their own religion was critical to the success of the Confederation agreement. Today in Alberta, and a number of other provinces, partial funding is available for religiously based private schools and, under section 21 of the *School Act* (2000), a school board, public or separate, may offer fully funded alternative programs that emphasize a particular language, culture or religion. "By endorsing the more-or-less equal existence of different cultures, languages, peoples and religions, the British North America Act of 1867 was, in itself, the prophecy of official multiculturalism" (Clarke, 2003, May 5).

On October 8, 1971, Prime Minister Pierre E. Trudeau tabled in the House of Commons the federal government's response to the recommendations of the Royal Commission on Bilingualism and Biculturalism in introducing the new policy of *Multiculturalism within a Bilingual Framework.*

> Canada's citizens come from almost every country in the world, and bring with them every major world religion and language. This cultural diversity endows all Canadians with a great variety of human experience. The government regards this as a heritage to treasure and believes that Canada would be the poorer if we adopted assimilation programs forcing our citizens to forsake and forget the cultures they have brought to us. ...Indeed, we believe that cultural pluralism is the very essence of Canadian identity (Appendix to Hansard, 1971, October 8).

By comparison, the United States sees itself as the melting pot of world cultures where assimilation into a unitary American culture is the revered objective. The Latin motto *E pluribus unum* appears on the Great Seal of the United States and its coinage. Translated, it means "From many, one" or "Out of many, one." Despite the fact that American currency and coinage also bears the motto "In God We Trust," government is not to be associated with religion. There is no public financial support for religiously based schools of any denomination.

When John F. Kennedy was a candidate for the Presidency of the United States, he knew that as the first Roman Catholic to do so, there would be a concern among many citizens about the potential for papal influence in the White House. On September 12, 1960, Kennedy faced this issue directly, selecting the most difficult audience imaginable with an address in Texas to the Greater Houston Ministerial Association:

> I believe in an America where the separation of church and state is absolute—where no Catholic prelate would tell the president (should he be Catholic) how to act, and no Protestant minister would tell his parishioners for whom to vote—where no church or church school is granted any public funds or political preference—…and where no man is denied public office merely because his religion differs from the president who might appoint him or the people who might elect him (Kennedy, 1960, September 12).

While all should find hope in Kennedy's vision of the electoral process, I have come to believe that the strength of Alberta's public education system is due, at least in part, to the fact that we are privileged to have two major components to that system. The fact that both of these systems receive full public funding, which follows the student in an open environment, empowers the parents. To the extent that this creates a competitive environment between public and separate schools, I believe it contributes to, rather than detracts from, that success. I believe that quality of service always improves when the client does not face a monopoly but has choices of equitable standing. If the concept of a competitive advantage is to be well understood anywhere, one should be speaking to the converted in the Province of Alberta.

The Threads of Passion

In reviewing the historical evolution of minority religious education rights in Alberta and Canada, I have been repeatedly impressed by the passionate conviction that appears to have driven those who touched upon and shaped the threads of that story. Richard W. Scott (1825-1913), a Conservative Member of the Legislative Assembly of Canada for Ottawa, stubbornly introduced a bill for four consecutive years, 1860 to 1863, before it was finally passed. The *Scott Act* (1863), fully titled *An Act to restore to the Roman Catholics in Upper Canada certain rights in respect to Separate Schools*, set a benchmark in Canada for separate school rights being consistent with public school rights. Section 93(2) of the *Constitution Act* (1867) extended all the powers, privileges, and duties of separate schools in Upper Canada to the Protestant and Roman Catholics of Quebec while section 93(3) protected separate school rights in law at the time any other province joined Confederation. Over forty years after the *Scott Act*, Richard W. Scott as Secretary of State in Wilfrid Laurier's Liberal government was instrumental in quelling the 1905 Cabinet revolt that threatened the protection of separate school rights in the bills to establish the new provinces of Alberta and Saskatchewan.

Samuel M. Genest (1865-1937), Chairman of the Ottawa Separate School Board, was at the centre of three different court actions, each of which went all the way to the Privy Council in London: the *Mackell Case* (1917), the *Ottawa Commission Case* (1917), and the *Ottawa Bank Case* (1920). Genest defied court orders and risked imprisonment for a number of years beginning in 1914 in defense of his belief that Ottawa Separate Schools should have the right to use French as the language of instruction. Today, this is a right protected by section 23 of the *Charter of Rights and Freedoms* (1982).

Justice Beck of the Alberta Appellate Court offered strong sentiments for members of a German Lutheran Protestant Church in his minority opinion in the *Ulmer Case* (1923). He compared the impugned legislation to the sort that had prevailed in the German Empire, which this group thought they were escaping when coming to Canada. Their desire to "have their religion pervade the secular instruction of their children" is not to be allowed them. In being forced to send their children to a public school where no religion is taught, "they have exchanged one Caesarism for another." Justice Beck referred to this legislation as a "tyrannous provision" (The *Ulmer Case*, par. 81, 82).

On April 14, 2000, the Alberta School Boards' Association hosted the meeting of board officials at which a vote of Alberta's school boards defeated the *Presidents' Proposal*. Following the vote, Lois Burke-Gaffney, President of the Alberta Catholic School Trustees' Association (ACSTA), addressed the assembly:

> You don't often get to speak at your own wake…terribly disappointed…it is hard to talk about Catholic issues when you're told your baby is ugly. I hope that soon this talk about constitutionality will end. How much cost do we have to bear? Sooner or later we have to get together. This is not a lost cause for ACSTA. Twenty-five years of work will not go away in one afternoon (personal notes).

There are three other individuals from Canada's past that have especially made lasting impressions for the way in which they touched dramatic moments in Canada's history and also shaped the evolution of minority religious education rights. These three are Guy Carlton, Thomas D'Arcy McGee, and Charles Fitzpatrick. I wish to briefly discuss the contributions of each.

Guy Carlton (1724-1808) was an Irish officer who came to Quebec with General Wolfe in 1759 as his quartermaster general. On the Plains of Abraham, Carlton commanded the Second Battalion of Royal Americans and was wounded in the head. He was appointed Governor of Quebec in 1766. Carlton believed that in order to be viable, Quebec had to be accepted as a French colony. Carlton argued that the imposition of Protestant English law on a French and Catholic colony was barbaric and of benefit to no one. In 1770, Carlton returned to London and spent the next four years lobbying for his vision of Canada to be made law. When the *Quebec Act* was finally past in 1774, it guaranteed Canadians the right to their religion, allowed Canadians to hold public office, and restored French civil law. Catholics in Canada now had rights they did not have in Britain.

Governor Carlton returned to Quebec in 1774. In late 1775, he successfully defended Quebec against an American invasion at the onset of the American Revolution. Following the American Revolution, Loyalists in Quebec wanted their own colony with English laws. Governor Carlton was instrumental in the passage of the *Constitution Act* of 1791, which, based on a suggestion by Carlton, divided the colony of Quebec into Lower Canada and Upper Canada. Upper Canada would be modelled after British society and Lower Canada would maintain the French language, civil law and Catholic religious institutions. Guy Carlton returned to England in 1796 (Gillmor and Turgeon, 2001).

Thomas D'Arcy McGee (1825-1868) was arguably Canada's greatest orator. He was also a journalist, poet, novelist, historian, parliamentarian and Father of Confederation. He has been referred to as our most daring leader and as a prophet for his dream of Canada as one nation from sea to sea.

Between 1846 and 1848, one fifth of the people of McGee's native Ireland died of hunger and disease during the potato famine. McGee became a leader in the radical

Young Ireland movement, writing and speaking with passion for Irish independence. By 1848, plans had been laid for an armed insurrection. McGee was forced to flee Ireland later that same year with a price on his head. He lived first in the United States as a journalist and author, becoming a strong advocate for the condition of Irish people in the United States and Canada. McGee became a strong proponent of education as the necessary means for emigrants to become part of ordinary society. In 1857, McGee relocated to Montreal where he started a newspaper and was elected as a Member of the Legislative Assembly of Canada that same year. It was common for the galleries of Canada's Legislature in Toronto to fill whenever D'Arcy McGee spoke. He argued for greater democracy and powers for minority religions. He toured Canada to prophesy for his vision of a new nation from sea to sea.

McGee believed passionately in the protection of Catholic minority schools and participated in a long and skillful battle to secure that right for Catholics in Ontario culminating in the passage of the *Scott Act* in 1863. McGee played a prominent part in the long and complex negotiations leading to Confederation in 1867. The *Constitution* that was adopted bore many of his influences, especially in the clauses that attempted to protect the rights of religious minorities.

During the 1850's, a new organization, the Fenian Brotherhood, took up the Irish revolutionary movement. The Fenians hoped to free Ireland by attacking the British colonies in North America. This resulted in a failed Fenian uprising known as the Battle of Ridgeway, Ontario in June of 1866. D'Arcy McGee, an Irish revolutionary himself two decades earlier, had grown critical of Irish terrorists and now believed in a new nation that tolerated everyone's views. He denounced the Fenians. McGee dared them to disturb his Canadian dream and pronounced that secret societies like theirs, that hated others, were evil. In April 1868, after a particularly passionate speech in Ottawa's new Parliament stressing the importance of the healing influence of time in the work of consolidating the Confederation of Provinces, the House rose after midnight. McGee walked the short distance to his lodging. D'Arcy McGee was shot in the back of the head as he was turning his key in the lock. McGee became the victim of Canada's only political assasination. An alleged Fenian sympathizer, Patrick Whelan, was convicted of the crime and hung in front of a crowd of five thousand—Canada's last public hanging.

D'Arcy McGee's funeral on his forty-third birthday, Easter Monday, saw the population of Montreal double with 15,000 people from all walks of life walking in the procession: French, English, Irish; Catholic and Protestant; poor and wealthy; minorities and majorities. They were all Canadians in the dream D'Arcy McGee had achieved for a new nation (Davis, 2004; Gillmor and Turgeon, 2001; Peacock, 2002).

Charles Fitzpatrick (1853-1942) was a talented jurist, eminent politician, and a man who marked Canadian history. He served as Chief Justice of the Supreme Court of Canada from 1906 to 1918. In 1915, the *Gratton Case* went to the Supreme Court. It had initially been launched two years earlier by the City of Regina concerning the rights of the public and separate school districts to corporate property taxes as a result of a statutory amendment by the Saskatchewan Legislature (Chapter Two). Alberta had passed a similar amendment. It was Chief Justice Fitzpatrick who, in a strange twist of jurisprudence, chose to express a majority opinion on separate school rights, held by four of the five Justices, in his minority opinion. He did this because addressing those rights had not been necessary in determining the appeal. In doing so, Fitzpaterick became the first Justice to attempt to define minority school rights. He addressed the applicability of the equity section, section 17(2) of the *Saskatchewan Act* (and the *Alberta Act*), to property taxes levied on companies. Then he discussed the rights of a supporter of the public school, "which is merely the school of the majority," with respect to the separate school, noting that separate supporters alone have rights in relation to separate schools. It is the rights of the minority as a class of persons that may not be prejudicially affected. In researching subsequent cases in this study, Chief Justice Fitzpatrick's comments are referenced repeatedly. His opinion represented the foundation on which subsequent decisions on minority school rights have been built.

In 1885, thirty years prior to his contribution to the *Gratton Case*, Fitzpatrick had a different involvement with the City of Regina and a pivotal moment in Canada's history. Fitzpatrick served as chief defence counsel for Louis Riel (1844-1885), accused of treason by John A. MacDonald's federal government following the North-West Rebellion. Fitzpatrick wanted to use an insanity defence for Riel, but Riel would not agree. Riel's execution in November 1885 had a lasting and controversial impact on Canadian culture. In 1892, Fitzpatrick defended Quebec Premier, Honore Mercier (1840-

1894). Mercier was the first Quebec premier to defend the principle of provincial autonomy within Confederation. In 1891, Mercier was dismissed from his office as Premier by the Lieutenant Governor based on a report that his government had diverted public funds. Fitzpatrick successfully defended Mercier who was found not guilty at his subsequent trial.

Fitzpatrick served in the Quebec Legislature from 1890 to 1896 and in the House of Commons from 1896 to 1906. As part of Wifrid Laurier's Cabinet, Fitzpatrick served as Solicitor General of Canada from 1896 to 1902 and Minister of Justice from 1902 to 1906. In this latter position, he served Laurier in 1905 as the federal government's representative in the negotiations that led to the creation of the Provinces of Alberta and Saskatchewan. Fitzpatrick was also particularly effective in his defence of the government's position to protect minority school rights in these two new provinces, characterizing it as fair and reasonable in view of the duality of the school system already in place in the North-West Territories.

When Fitzpatrick resigned from the Supreme Court in 1918 after twelve years as Chief Justice, he accepted the position of Lieutenant Governor of Quebec, a post he held until his retirement in 1923 (Sparby, 1958; Supreme Court, 2004).

Research Questions Revisited

In the Introduction, pages 4 and 5, three primary research questions were outlined, which my research addressed. I want to return to those three specific areas and summarize *answers* or findings. From those findings, what specific conclusions may be made and what recommendations for change arise from those conclusions?

Historical Relevance

The first area of research dealt with the relevance and impact of separate school rights on the governance and finance of Alberta's public education system. Specifically addressed were the historical, legislated, and judicial origins of those rights and how those rights were interpreted, modified, implemented, and financed prior to the election of the Progressive Conservative government under Premier Klein in 1993.

Separate school rights in Canada may be traced back to the dramatic concession given by Protestant England to its new French-speaking, Roman Catholic subjects in the Articles of Capitulation following the fall of Montreal in 1760. The Quebec Colony retained the right to the free exercise of the Roman Catholic religion. This was reinforced by England in the *Quebec Act* of 1774. Following the *Act of Union* (1841), which created a single political entity out of Upper and Lower Canada, the *Common School Act* of 1841 first stated the right to publicly funded separate schools. The *British North America Act* (*Constitution Act*) of 1867 protected existing separate school rights for the Protestant and Roman Catholic minorities in Quebec and Ontario and provided that future provinces would also have separate school rights if those rights existed in law and the time the province joined Confederation. Political leaders and court justices referenced repeatedly separate school rights as the greatest single issue in the Confederation process. The *North-West Territories Act* (1875) included a provision for separate school rights for the Protestant or Roman Catholic minority. This was extended to the *School Ordinance* of 1901 and, as stipulated in the *British North America Act* (1867), protected by the House of Commons in the *Alberta* and *Saskatchewan Acts* of 1905.

Various court cases interpreted the *rules of the game* in the governance and finance of separate schools. Roman Catholics are those Christians who recognize the authority of the Pope in Rome. Protestants are those Christians who are not Roman Catholic. In Alberta and Saskatchewan, persons of the faith of those who established a separate school district are residents, ratepayers, and electors of that separate district and have no option to remain residents, ratepayers, and electors of the public school jurisdiction, as they do in Ontario. A supporter of the public school has no rights with respect to the separate school. It is the rights of the minority that are constitutionally protected leaving the majority to protect themselves democratically through the use of the ballot box. Section 17 of the *Alberta Act* (1905), which protected minority religious education rights, was within the constitutional authority of the Parliament of Canada. Consistent with section 17(2) of the *Alberta Act* (1905), there shall be no discrimination between public and separate schools in the appropriation by the legislature or provincial government of any moneys in support of schools. Legislation giving separate jurisdictions a proportional share of undeclared corporate assessment met the test of non-discrimination and fairness.

The language of instruction used in both public and separate schools is subject to the approval and direction of the provincial government, except as guaranteed under section 23 of the *Charter of Rights and Freedoms* (1982). The provincial government may establish a uniform curriculum across the province for both public and separate schools without offending separate school rights. Only denominational aspects of education in separate schools are protected. The provincial government may replace a separate board of trustees with an appointed trustee(s) for failure of a separate board to perform its duties in accordance with the law and regulation, but only for a reasonable and specified period of time. No part of the *Constitution* is paramount over any other part. Section 2(a) [freedom of conscience and religion] and section 15(1) [equality] of the *Charter* cannot be used to in any way lessen the protection of separate school rights guaranteed by section 93 of the *Constitution Act* (1867) and recognized by section 29 of the *Charter*. The provincial government may redefine the historic boundaries of the public school districts within school divisions without infringing on the constitutional protections of the minority faith electors within those school districts. A provincial government may amalgamate separate school jurisdictions, divide their territory, or annex part of the territory of one separate jurisdiction to another without infringing on the constitutional protections.

A review was completed of the comparative fiscal equity of available resources between public school jurisdictions and separate school jurisdictions in Alberta along with the comparative level of investment in classroom instruction. One year in each of three decades was addressed: 1973, 1983, and 1993, the latter year being the last in which Alberta's school boards had unencumbered access to the local property tax base. In 1961, with the introduction by the provincial government of the School Foundation Program Fund (SFPF), the overall average share of school jurisdiction revenue coming from the local property taxes was at its lowest historical level at 5.4 percent. By 1973, local taxes accounted for 12.9 percent of total revenues, 30.0 percent by 1983 and 36.8 percent in 1992-93. In 1973, 1983, and 1993, Alberta's public jurisdictions consistently had an advantage over separate jurisdictions in the level of assessment wealth, the level of supplementary requisition produced, and the amount invested in classroom instruction, while separate jurisdictions often levied higher mill rates for the privilege.

Between 1973 and 1993, the balance of local assessment wealth shifted dramatically from the large public urban centres to the public rural jurisdictions and from southern Alberta to northern Alberta, which resulted primarily from the significant growth in linear property assessment. This diminished the wealth variances between public and separate jurisdictions in the large urban centres but worsened the comparison significantly in the rural divisions and counties, in spite of the provincial government's efforts at providing equilization grants. Since larger separate rural jurisdictions were generally wealthier than smaller separate rural jurisdictions, separate rural jurisdictions worked diligently to expand their boundaries in an effort to cope with this phenomenon. This fiscal imbalance between public and separate jurisdictions raised the further question of whether the constitutional requirement for equitable treatment of public and separate jurisdictions in the allocation of fiscal resources included revenues available from the local assessment base.

Post 1993

The second area of research addressed the issues and changes significantly affecting the governance and finance of separate school since 1993. Specifically addressed was the impact on separate school jurisdictions from the reduction in the number of school jurisdictions and the move to full provincial funding, the further understandings provided by the judiciary, and the failure of multiple attempts to change the way the boundaries of separate school jurisdictions are expanded.

The Progressive Conservative Government under Premier Klein made a number of changes in the governance and finance of school jurisdictions as part of the overall initiative to deal with the provincial deficit. Between 1993 and 1994, the Government of Alberta reduced its number of school jurisdictions from 181 to 60, including a reduction in the number of separate jurisdictions from 80 to 16. This was done to bring a greater level of efficiency to local governance and to reduce administration costs. Full provincial funding served to equalize both the property tax burden for education and the fiscal resources available to all school jurisdictions. Separate school jurisdictions collectively realized the greatest benefit from this funding change. Fearing litigation, the province gave separate jurisdictions the right to opt out of the new Alberta School Foundation Fund (ASFF) and continue to collect their own property taxes directly from the local municipalities. All separate jurisdictions subsequently did opt out of the ASFF inspite of the fact that they had received the greatest benefit from the new model and that opting out made no difference in the total revenues available to each separate board. It may be concluded that having all separate jurisdictions opted out of the ASFF was not the positive result the provincial government was hoping for when implementing a new funding scheme to equalize the fiscal resources available to all school jurisdictions.

In 1997, both the Provinces of Quebec and Newfoundland launched successful initiatives under the amending formula of the *Constitution Act* (1982) that resulted in the elimination of separate school rights in those two provinces. The majority electors, by popular vote, had succeeded in taking away the constitutionally protected rights of a minority. This raised fears that the same constitutional change potentially could occur in any of the remaining three provinces with minority religious education rights.

Five additional court cases provided further understanding of the governance and finance of separate schools and adjudicated the appropriateness of changes. Provincial government funding of separate religious schools but not private religious schools does not offend the *Charter of Rights and Freedoms* (1982), although a province could, if it chose, extend funding to private religious schools. There are no public school rights that are constitutionally entrenched by law or convention. The *Constitution Act* (1867) protects only the denominational aspects of education as well as the non-denominational aspects necessary to deliver the denominational elements. Placing spending restrictions on both the public and separate jurisdictions does not offend denominational rights. The authority of separate jurisdictions to tax supporters is not a protected denominational aspect of education. The *Constitution* protects the right to funding for the separate system that is equivalent to the public system but not the specific mechanism through which that funding is delivered. A province may amend its system of separate schools or do away with it altogether under the amending formula provided in the *Constitution Act* (1982).

The test for the constitutional requirement for equitable treatment of public and separate schools in the provincial allocation of fiscal resources is fairness. The funding scheme *as a whole*, including local requisitions, can be taken into account in determining what is fair. This judicial finding leads to the conclusion that prior to 1994, to the extent that separate jurisdictions consistently were disadvantaged compared to public jurisdictions in the level of local requisition resources available, the funding scheme as a whole violated the specific requirements of Canada's *Constitution*.

For over a decade beginning in 1993, the Province of Alberta and the three school trustee associations struggled with the need to find an alternative to the traditional process for expanding separate school jurisdictions one four-by-four public district at a time. This eventually resulted in a legislated alternative method, but the Minister of Education subsequently placed a moratorium on its use pending the outcome of pending litigation, leaving only the traditional process. The primary issues involved were individual choice for separate electors, coterminality of separate jurisdictions with one or more public jurisdictions, and the need for public board approval in the use of the alternative method. This extensive process clearly demonstrated the challenges of working with divergent interest groups to achieve change in constitutionally protected minority rights. It may be concluded that separate jurisdiction boundary expansion continues to be an unresolved issue of significance.

Opinion Leaders

The third area of research addressed the beliefs, perceptions and viewpoints of seven recognized opinion leaders that have influenced the political dynamic relevant to the provision of separate schools in Alberta. Specifically addressed were the changes since 1993 and contemporary or outstanding issues.

There was no consensus on the need for separate boards to opt out of the ASFF. Neither was there a consensus on the legal ability of the provincial government to eliminate the option for separate jurisdictions to opt out of the ASFF. It was concluded that the concept of separate boards being given the same choice that they were under the previous SFPF, to opt in to the ASFF rather than opt out, merits consideration.

There was consensus on the need for local consultation between public and separate jurisdictions with regard to the issues with expanding separate school services. There was no consensus on the legality of the alternative method of expanding separate school jurisdiction boundaries as evidenced by outstanding litigation.

There was a general understanding for the need for separate schools to be separate and that there is ample opportunity for children to mix with others in a multiplicity of activities outside of school. There was a near consensus on the need for alternative facility solutions in sparsely populated rural areas. It was concluded that the viability of small rural public schools is the single greatest concern for public jurisdictions with the expansion of separate school services in rural areas.

There was strong general support for the concept of parental choice. Non-Catholic students should be able to attend separate schools and Catholic students should be able to attend public schools if that is what parents want for their children. There was a near consensus on the benefit of having two major school systems, one public and one Catholic, in that competition between the two may contribute to the level of educational excellence that Alberta has experienced.

There appeared to be a near consensus on the merits of individual choice for Alberta's separate electors to remain residents of the public system *but only if* it could be accomplished without a constitutional amendment. It was concluded that there was an opportunity to achieve this individual choice for separate electors in Alberta and to resolve the outstanding issues with separate jurisdiction boundary expansion at the same time.

Before presenting some recommendations arising from the findings and conclusions of this study, it is appropriate to first consider the future of separate schools in Alberta. If our system of separate schools is no longer relevant in today's Alberta society, perhaps recommendations for its long-term security and enhancement are of no value.

The Future of Separate Schools

The elimination of minority school rights in Quebec and Newfoundland serves as a contemporary reminder of the fragility of those rights. I want to provide informed discussion on the future of those rights within the three provinces that still have them, Alberta, Ontario and Saskatchewan.

Journalist Lois Sweet's statement in her 1997 book, *God in the Classroom*, that it is time for "re-examining the issue of the constitutional guarantee for public funding to Catholic Schools in light of today's new multicultural, multi-religious reality" (Sweet, 1997: p. 16) was discussed at length in Chapter Thirteen. It is the role of journalists to be controversial and so perhaps their comments should be considered with caution. But when academics from our nation's institutions of higher learning begin to express concerns, they are perhaps more difficult to ignore. These are the educational leaders who shape the understandings of our youth.

William F. Foster is a Professor of Law at McGill University while William J. Smith is an Assistant Professor in the Department of Educational Studies at that same university. In Part I of their collaboration on religion and education in Canada, they conclude with a somewhat gentle reference to the continued appropriateness of section 93 of the *Constitution Act* (1867). "It is perhaps timely to consider an alternative frame for the debate on the place of religion in education, one that is inclusive rather than exclusive in nature" (Smith and Foster, 2001, March: p. 447). They note the advent of human rights legislation and the Canadian *Charter* where the application of rights "can evolve with time, rather than be based on static rights that existed by law at some point in the past" (p. 447). Then in Part II of their collaboration, their position becomes much more specific and direct. They make reference to the decision of the of the United Nations Human Rights Committee in *Waldman* [Chapter Ten, page 244]. Foster and Smith state that the three provinces with constitutionally protected minority religious rights should "follow the example set by Quebec and remove the application of these guarantees from the Constitution as they are inconsistent with our obligations under international human rights law and inconsistent with the values underpinning the *Canadian Charter*" (Smith and Foster, 2001, May: p. 66). They conclude with the logic, "We have two official languages in Canada but we have no official religions and the exclusive endorsement of Catholic and Protestant faiths has no place in our public schools" (p. 66).

Ailsa M. Watkinson is an Associate Professor in the Faculty of Social Work at the University of Regina. In April 2003, she presented a paper to the annual conference of the Canadian Association for the Practical Study of Law in Education (CAPSLE) on public education and religion. Ms. Watkinson proposed that those provinces currently funding Roman Catholic schools "muster the courage displayed by Newfoundland and Quebec and bring this Constitutional anomaly to an end" (Watkinson, 2003: p. 4). Public funding of schools defined by religion "weakens the goals of public education by isolating us from one another" (p. 5). She stated that she was "deeply concerned about entrusting public education to institutions whose beliefs and practices are a direct and powerful challenge to the equality rights of equality seeking groups" (p. 6). Ms. Watkinson then concluded with the following summary of the Church's equality rights deficiencies:

> The Catholic religion is built on patriarchy. The church's stand on abortion and birth control is contrary to the rights of women as provided for in Canada's *Charter of Rights and Freedoms* and other international human rights documents, their views on sexual orientation are out of step with Canadian society and human rights principles (Watkinson, 2003: p. 12).

Smith and Foster appear to have two main points to support their position that minority religious education rights should be removed from the *Constitution*: the United Nations Human Rights Committee's position in *Waldman* and their inconsistency with values underpinning the Canadian *Charter of Rights and Freedoms*. I find it interesting that Smith and Foster appear to pick and choose between the rights that are protected under the *Charter*. Section 29 of the *Charter* protects minority religious education rights while section 23 protects minority linguistic education rights. It appears that one is acceptable and the other is not. It is true that we have no official religions while we have two official languages, but constitutional protection for minority language, English or French, and for minority religion, Protestant or Catholic, are two sides of the same coin that is the Confederation compromise that brought our two founding cultures together. While the nourishing and sustaining of that compromise has had its challenges, Canada today stands as a lighthouse example that two different founding cultures can coexist as a single nation. I believe that is something to be admired on the world stage and I find it disappointing that the United Nations Human Rights Committee considered such fundamental commitments of no value.

Smith and Foster argue that minority religious education rights should be eliminated because those rights themselves are inconsistent with the values espoused in the *Charter*. I consider that to be a fair comment. Watkinson, however, appears to argue that those rights should be eliminated because of the nature of the religious beliefs. I find it especially disappointing that she would choose to make her argument by critisizing the religion itself.

Watkinson makes the legitimate point that religious schools isolate us from one another. This was discussed extensively in Chapter Thirteen and I have come to the recognition that whether students are separated between schools because of religion, language, gender, sports, or artistic endeavors, it is only for the minor portion of their waking hours. There is ample time outside of school for students to mix across these interest groups where Catholics will rub shoulders with those of other faiths, where French students will converse with the English and Arabic, and girls and boys will work and play together. Also, where parents desire an education for their children based on religious values and there are sufficient numbers to make such a program viable within a publicly funded education system, I believe that it should be provided to them. This is preferable to forcing them into private religious schools outside the public system or into secular schools within it. Make no mistake, secularism is a religion that excludes all others and is not a particularly shining example of the values underpinning Canada's *Charter*. "Without diversity we fall into the vulnerability of a monoculture" (Hobbs, 1989: p. 173).

As I stated in the Introduction chapter, I am not affiliated with a protected religious minority. However, I believe strongly in parental choice wherever there are sufficient numbers to warrant public funding of that choice. And as I stressed at the beginning of these reflections, I believe that both dimensions of our public education system are stronger than either would be alone.

Alberta's Catholic bishops have the following to say about the purpose of Catholic education:

> Catholic education is a unique and valuable dimension of the education system because it encompasses the whole person – academic, aesthetic, physical and, most significantly, spiritual. Catholic education exists in a publicly funded capacity because our society recognizes the added value of a multi-dimensional

> education system where parents have the freedom to choose a faith-based education for their children (Alberta bishops, 2003, November 3).

I believe in the essential need to nourish the spirit as well as the mind and body. Education provides an impact on the spirit of individuals and influences their values whether it is provided in a secular educational environment or one based on a particular set of values or faith. If we adhere to the principle that the parents have a right, if not obligation, to pass their values on to their children and that this is preferable to having the state select those values for them, then it is hard to speak against the concept of parental choice in selecting an educational environment for their children.

Rev. Fr. Stefano Penna spoke in our interview of April 14, 2005 about the need for a spiritual dimension in the educational programs for our youth and made reference to the death of Pope John Paul II just twelve days earlier on April 2, 2005:

> An old man died, you know, and three million young people came to Rome to look at him—in secular Europe. An old man died and people are talking about it all over the place—really weird. It's because there is a spiritual dimension that ultimately and originally education was understood to be about. Education is about the care of the soul. …But the soul, the *soul*, the questions of ultimate meaning—young people are looking for someone to draw them out and help them establish that. And pure freedom is not an adequate response anymore cause it's a vacuum and you can't choose in a vacuum… You can choose if you've got an option. And young people—they looked at this old guy—he told them something, at least, and he stands for something. And they had to argue with it. They had to think about it.

But do parents in Alberta continue to value the opportunity to access a faith-based education in Alberta's separate schools? The answer appears to be contained within the Appendices that support Part II of this study, supplemented by student enrolment information for September 30, 2003 provided by the School Finance Branch of Alberta Learning as at April 2004. Extracted information has been summarized in Appendix F. It compares public and separate school enrolments for Alberta as a whole and for the City of Calgary at September 30 in the years 1973, 1983, 1993, and 2003.

Between 1973 and 1983, the total enrolment for Alberta's public and separate schools grew a modest 1.0 percent from 415, 386 to 419, 400. The total enrolment for the public schools had no growth at 0.0 percent from 341,005 to 341,037 while the total enrolment for the separate schools grew 5.4 percent from 74,381 to 78,363. Between

1983 and 1993, the total enrolment grew an impressive 13.4 percent to 475,505. But the public system grew by 10.4 percent to 376,415 while the separate system grew by 26.4 percent to 99,090. The growth in the separate system equated to 36.9 percent of the total growth in students. Between 1993 and 2003, the total enrolment grew by just 2.5 percent to 487,516. But the public system declined by 1.4 percent to 371,147 while the separate system grew by 17.4 percent to 116,369. The growth in the separate system equated to 143.9 percent of the total growth in students. This ignores the 3,141 students served by Francophone Authorities in 2003, which, being largely Roman Catholic, would have made this comparison even more dramatic. Between 1973 and 2003, the separate system went from educating 17.9 percent of the total enrolment in the public and separate schools to educating 23.9 percent of that total, a growth of 33.5 percent in the share of students accessing separate schools.

Students in Alberta chose to access separate schools at a growing rate over the thirty-year period from 1973 to 2003. But expansion of separate school boundaries within Alberta would no doubt account for a portion of that. Alternatively, the same references are considered for coterminous public and separate boundaries in Alberta's largest city.

Between 1973 and 1983, the total enrolment for the public and separate schools in the City of Calgary declined 1.1 percent from 103,175 to 102,036. The total enrolment for the public schools declined 3.3 percent from 81,297 to 78,590 while the total enrolment for the separate schools grew 7.2 percent from 21,878 to 23,446. Between 1983 and 1993, Calgary's total enrolment grew an impressive 21.5 percent to 123,942. But while the public system grew nicely by 16.8 percent to 91,831, the separate system grew by 37.0 percent to 32,111. The growth in Calgary's separate system equated to 65.4 percent of the city's total growth in students. Between 1993 and 2003, Calgary's total enrolment grew by 5.6 percent to 130,847. But the public system declined by 1.0 percent to 90,945 while the separate system grew by 24.3 percent to 39,902 (excluding the enrolments of separate schools in Airdrie, Chestermere, and Cochrane that had been added to Calgary Separate by amalgamation). The growth in the separate system equated to 112.8 percent of the city's total growth in students. Between 1973 and 2003, Calgary's separate schools went from educating 21.2 percent of the city's total enrolment to educating 30.5 percent of that total, a growth of 43.9 percent in the share of students accessing separate schools.

It is clear that the number of Alberta parents who value the opportunity to access a faith-based education for their children in Alberta's separate schools has consistently grown exponentially over the past three decades. It may be concluded that Alberta's separate schools, within the province's two-dimensional public system, have an increasing relevance in Alberta's contemporary society.

Recommendations

I wish to conclude by making a few specific recommendations, which I believe are critical to the future of minority religious education rights in Alberta.

1. *It is recommended that Alberta's separate school boards, the Alberta Catholic School Trustees' Association (ACSTA) and Alberta's Bishops recognize the need and appropriateness of greater flexibility in school facility alternatives in certain areas of rural Alberta.*

I admire Red Deer Catholic Regional Division, and other separate jurisdictions such as Elk Island and Grande Prairie, for their courage in supporting instances of shared facilities with their public board counterparts without the consistent support of the Alberta separate school community. It was done out of a belief in doing what was right for a particular local community rather than following generic strictures. Nothing inspires fervour and opposition to the concept of separate schools, both locally and provincially, like a proposed separate jurisdiction expansion into an area where the viability of the existing public school is already in question. Separate school leaders and public school leaders must do a better job of working together to find joint solutions that meet the needs of the whole community and move away from the *them-or-us* mentality.

2. *It is recommended that the* School Act *of Alberta be amended so that separate school boards have the option to opt in to the Alberta School Foundation Fund (ASFF), as was the case with the previous School Foundation Program Fund (SFPF), rather than the option to opt out of the ASFF, as is currently the case. Separate boards that*

choose not to opt in to the ASFF and collect their own property taxes directly from their municipal authorities would have their total provincial funding reduced under the Funding Framework by the value of the top-up necessary to bring them to the provincial average amount of ASFF per enrolled student.

When Bill 19 was being drafted in 1994 to enable the provincial government to assume responsibility for the property tax base in support of education, the concept of assuming that separate boards would be part of the new ASFF seemed more positive than assuming that they were initially outside of it, as had been done since 1961 under the SFPF. Separate jurisdictions stood to gain financially to such a significant degree by the provincial pooling of property taxes that it never occurred to the naïve provincial authorities that separate boards would not gladly participate. To now have all separate boards consistently opt out of the province's funding scheme is, I believe, an unnecessary embarrassment and irritant to the provincial government. Separate jurisdictions collectively understand that if legislation gives them a right to do something, they must exercise that right in order to protect and preserve separate school rights in general. Accordingly, separate boards exercise their right to opt out of the ASFF. If the *School Act* were amended so that they are out of the ASFF until they exercise their right to opt in, the result would be quite different. I believe this would be a far superior and more positive amendment than removing the right of separate boards to opt out of the ASFF on the strength of the *Bill 160 Case*, which the ACSTA would feel compelled to challenge in the courts on principle. Separate jurisdictions would continue to have access to the same information contained in their assessment rolls if opted in to the ASFF.

3. *It is recommended that the* School Act *of Alberta be amended to give separate electors, wherever in Alberta there is a separate school jurisdiction, the individual choice to be a resident, ratepayer, and elector of the separate school jurisdiction or the public school jurisdiction. Concurrent with the proclamation of such amending legislation and only then, the boundaries of each of the fifteen separate jurisdictions in a separate school region would be expanded to coincide with the boundaries of the separate school region using section 239 of the* School Act *(2000). The traditional*

method of establishing separate jurisdictions would be retained in the School Act *while the alternative method would be repealed.*

Chapters Eleven and Twelve explored the extensive efforts of all concerned over the years to find a better way to deal with the expansion of separate school boundaries than the controversial traditional method of expanding one four-by-four public district at a time. Currently, those efforts add up to a noble but failed effort. The Minister of Education has appropriately placed a moratorium on the use of the alternative method of expansion until pending litigation is resolved leaving our collective system back where it has always been with the traditional method only. This recommendation would remove the need for any future separate jurisdiction expansions within the fifteen existing separate school regions and avoid the anxiety such expansions create in communities. The traditional method of establishing separate school jurisdictions would be retained in the *School Act* in recognition of the protected process contained in Alberta's precedent legislation, which would be used for expansions in those areas of the province not contained in a separate school region.

According to the advice of Alberta Justice during the development of the *Presidents' Proposal*, it is probable that individual choice would be viewed by the judiciary as a less restrictive and a higher level of choice than the existing collective choice of the majority of the minority and that it would be found to be within the authority of the provincial legislature to grant such an enhanced right to separate school electors. Kevin Feehan and Stefan Michniewski of the ACSTA expressed the view that individual choice would be superior but only if a constitutional amendment were not involved. If David King were correct in his expressed belief that the Public School Boards' Association (PSBAA) would not challenge a move to individual choice for separate electors, it is unlikely that the advice of Alberta Justice would ever be tested in court. This compares favourably to the situation we have now with pending litigation on the alternative method with the ACSTA and PSBAA as the chief protagonists.

If there is a legal uncertainty about whether the Minister can use section 239 of the *School Act* to expand separate jurisdiction boundaries under the alternative method, is not this recommendation subject to the same uncertainty? The primary concern with the alternative method is that separate school electors are deprived of their right to choose for themselves to be part of a separate school jurisdiction or not. Expanding separate school jurisdiction boundaries to be coterminous with the separate school regions in combination with a move to individual choice for separate electors completely eliminates that issue.

There has been a recurring concern expressed when considering any expansion of Catholic separate jurisdiction boundaries beyond one single public district at a time that occasionally Protestant electors might be deprived of their right to establish a separate district where they may have been the minority in a single public district caught up in the expansion. But it was determined in the *St. Walburg Case* that the provincial government is able to redefine the historic boundaries of public school districts without infringing on the constitutional protections of minority faith electors within those districts. Also, I believe that the educational needs of Protestant parents are almost always met by the public jurisdiction. Protestant minorities have had over a century to establish separate schools but have rarely done so and then only where the jurisdiction operating the public schools was a Catholic jurisdiction. I refer to Justice Brossard's position in the *QAPSB Case* that the necessity for a Protestant minority school may be more to prevent students of the Protestant faith from finding themselves in a school controlled by a Catholic majority than the furtherance of Protestant religious teachings. Where there is a Catholic separate jurisdiction, the public jurisdiction fulfills that need for those of the Protestant faith.

In September 1980, Lakeland Separate District was established with coterminous boundaries to the newly created Lakeland Public District, both of which had the same boundaries as the previous Bonnyville School Division. This gave us a successful pilot where a large rural public and separate jurisdiction served the same area. What this model accomplished in particular was that it became necessary for the public and separate jurisdictions to collaborate more closely. In the smaller communities where a stand-alone separate school was not viable, separate students continued to attend the public schools but accommodations could be made for religious programs. Such a model would be even more practical under individual choice because members of the minority faith would not be forced to be residents and electors of a separate jurisdiction that did not yet offer services to their corner of the jurisdiction. Even when separate school services were available, members of the minority faith who on principle wished to remain residents, electors, or even elected trustees of the public jurisdiction would be able to make that individual choice.

If separate school rights in Alberta are to remain secure into the province's second century, I believe that it is essential that separate jurisdictions are viewed by the majority as collaborative educational partners with both the public jurisdictions and the province in the furtherance of our greater public system, while maintaining full access to their minority rights. The anxieties associated with separate school jurisdiction expansions such as small school viabilities or public trustees forced from office must be minimized or eliminated. These recommendations are offered to assist with those objectives.

Parting Thoughts

In asking myself what it is that I hope to have accomplished with this study, I come to the one primary objective of fostering understanding through communication. One strategy "for facilitating communication between and within…communities …involves the education of individuals so that they can better communicate with members of the other cultural group" (Ginsburg and Gorostiaga, 2001: p. 186, 187).

I have heard the old axiom repeated many times within my own cultural experience that if you want to get along in this life, there are two things you should never discuss: *religion* and *politics*. I fear that I have now offended the *p*rophesorial *p*recepts of my *p*rogenitors. I hope that they are not judging me too harshly. It is my personal desire that by committing this offence, I will inspire others to do the same.

References

General

Alberta bishops (2003, November 3). Alberta bishops support Catholic education. *Western Catholic Reporter*, p. 1.

Alberta Education (1974a). *The sixty-ninth annual report 1974*. Edmonton, Alberta.

Alberta Education (1974b). *The sixty-ninth annual report (supplement), financial tables*. Edmonton, Alberta.

Alberta Education (1975). *Report: The Minister's Advisory Committee on School Finance*, Edmonton, Alberta.

Alberta Education (1981). *Financing K-12 schooling in Alberta*. Edmonton, Alberta.

Alberta Education (1982). *Financing schooling in Alberta: Report of the Minister's Task Force On School Finance*. Edmonton, Alberta.

Alberta Education (1983a). *Annual financial & statistical analysis – from 01 January 1983: Assessments and requisitions – 1983*. Edmonton, Alberta.

Alberta Education (1983b). *Financial and statistical report of Alberta school boards, Fiscal Year Jan. 1 – Dec. 31, 1983*. Edmonton, Alberta.

Alberta Education (1983c). *Seventy-ninth annual report 1983-84*. Edmonton, Alberta.

Alberta Education (1984a). *Annual financial & statistical analysis – from 01 January 1984: Assessment and requisitions – 1984.* Edmonton, Alberta.

Alberta Education (1984b). *The fragmentation and amalgamation of school jurisdictions in Alberta*. Report prepared by the Finance and Administration Division, June 1984.

Alberta Education (1987). *Equity in education finance*. Edmonton, Alberta.

Alberta Education (1991a). *Vision for the nineties—a plan of action*. Edmonton, Alberta

Alberta Education (1991b). *Annual financial & statistical analysis – from 01 January 1991: Assessments and requisitions – 1991*. Edmonton, Alberta.

Alberta Education (1992). *1992/93 school grants manual*. Edmonton, Alberta

Alberta Education (1994a). *Financial and statistical report of Alberta school jurisdictions: divisions and districts – September 1, 1992 to August 31, 1993; counties – January 1 to December 31, 1993*. Edmonton, Alberta.

Alberta Education (1994b). *89th annual report 1993 – 1994*. Edmonton, Alberta.

Alberta Education (1994c). *News release*, January 18, 1994.

Alberta Education (1994d). *News release*, February 18, 1994.

Alberta Education (1994e). *Meeting the challenge*, a three year business plan for Alberta Education, February 24, 1994.

Alberta Education (1994f). *News release*, March 30, 1994.

Alberta Education (1994g). *News release*, October 13, 1994.

Alberta Education (1995). *Financial and statistical report of Alberta school jurisdictions: divisions and districts – September 1, 1993 to August 31, 1994; counties – January 1 to December 31, 1994*. Edmonton, Alberta.

Alberta Education (1999). *Review of the framework for funding school boards*, report and recommendations of the Funding Framework Review Committee, May 1999.

Alberta has found a schools solution; Ontario ignored Catholic rights, (1998, July 25). *Edmonton Journal* editorial, p. A12.

Alberta Learning (1999). *News release*, July 23, 1999.

Appendix to Hansard (1971, October 8). The Federal response to the recommendations of the Royal Commission on Bilingualism and Biculturalism. *http://www.canadahistory.com/sections/documents/trudeau_-_on_multiculturalism.htm*

Ball, S. J. (1998). Big policies/small world: an introduction to international perspectives in education policy. *Comparative Education*, Vol. 34, No. 2.

Berg, B. L. (1995). *Qualitative research methods for the social sciences*, Second Edition, Needham Heights, MA: Allyn and Bacon.

Blumer, L. (2000, April 17). Experts cool to school plan. *Western Catholic Reporter*, p. 3.

Boyd, D. (1996). Dominance concealed through diversity: Implications of inadequate perspectives on cultural pluralism. *Harvard Educational Review*, Vol 66, No. 3, Fall 1996.

Bracken, L. A. (2005). *School reform in Quebec, Canada: A Multi-faceted approach*. A paper prepared for the Sir Wilfrid Laurier School Board, Quebec. May 2005. *http://www.swlauriersb.qc.ca/english/about_us/A%20Multi-faceted%20Approach.pdf*

Bumbarger, C. S. and Ratsoy, E. W. (1975). *Financing small schools and jurisdictions: An analysis and proposal for Alberta*. A study commissioned by the Minister of Education, University of Alberta, Edmonton, Alberta.

Byfield, L., (1997, November 24). Why did the Catholics sell out Alberta's Protestant schools? *Alberta Report*, Vol. 25, No. 50, p. 2.

Carasco, J., Clair, N., and Kanyike, L. (2001). Enhancing dialogue among researchers, policy makers, and community members in Uganda: Complexities, possibilities, and persistent questions. *Comparative Education Review*, Vol. 45, No. 2, May 2001.

Choquette, R., (1972). *Linguistic and ethnic factors in the French Irish Catholic relations in Ontario*, CCHA Study Session, 39(1972). 35-43. http://www.umanitoba.ca/colleges/st_pauls/ccha/Back%20Issues/CCHA1972/Choquette.pdf

Clandinin, D. J. and Connelly, F. M. (1994). Personal experience methods. In *Handbook of Qualitative Research*, First Edition, edited by N. K. Denzin and Y. S. Lincoln.

Clarke, G. E. (2003, May 5). Building bridges: Cultural pluralism is at the heart of Canadian identity, Professor says. News @ UofT. http://www.news.utoronto.ca/bin5/thoughts/forum030505.asp

Collins, T. (2005, January 5). Catholics have second chance at vote. *Didsbury Review*, p. 1.

Collins, T. (2005, February 2). Catholic vote "yes" to RDCRD expansion into Didsbury. *Didsbury Review*, p. 1.

Crotty, M. (1998). *The foundations of social research*, Thousand Oaks, CA: Sage.

Crush, K. (2001, February 28). Catholic board looking to extend border to Vegreville. *Sherwood Park News*, p. A4.

Dalton, D. (1999). *The child's right to an education for open-mindedness: A moral and legal theory of materials access and selection in educational curricula*. Unpublished doctoral dissertation, University of Alberta, Edmonton, Alberta.

Darby, P. A. (1993). *Fiscal equity in the Alberta school system 1961 to 1990*. Unpublished doctoral dissertation, University of Alberta, Edmonton, Alberta.

Davis, W. G. (2004). *Thomas D'Arcy McGee: Irish founder of the Canadian nation*. Given as a speech by the former Premier of Ontario to St. Paul's University in Minnesota. http://72.14.207.104/search?q=cache:I828jVbxML4J:gail25.tripod.com/mcgee1.htm+%22Thomas+D%27Arcy+McGee%22+&hl=en&gl=ca&ct=clnk&cd=4

Deiseach, D. (1974). *Fiscal equalization of school system revenues under the Alberta School Foundation Program 1961-1971*. Unpublished doctoral dissertation, University of Alberta, Edmonton, Alberta.

Denzin, N. K. (1995). The experiential text and the limits of visual understanding. *Educational Theory*, Winter 1995.

Denzin, N. K. (2000). The practices and politics of interpretation. In *Handbook of Qualitative Research*, Second Edition, edited by N. K. Denzin and Y. S. Lincoln. Thousand Oaks, CA: Sage.

Denzin, N. K. and Lincoln, Y. S. (2000). Introduction: The discipline and practice of qualitative research. In *Handbook of Qualitative Research*, Second Edition, edited by N. K. Denzin and Y. S. Lincoln. Thousand Oaks, CA: Sage.

Derworiz, C. (2001, June 5). Funding for new schools delayed: Calgary trustees tire of waiting. *Calgary Herald*, A1.

Dion, S. (1997, October 27). *The amendment to Term 17 of Newfoundland's Terms of Union with Canada*. Introduction of a resolution by the Honourable Stephane Dion in the House of Commons.
http://www.pco-bcp.gc.ca/ Press Room, Speeches, 1997, October.

Di Sabatino, D., (1997, September 22). After Newfoundland and Quebec, where next? Alberta's religious educators fear a westward spread of eastern intolerance, *Alberta Report*, Vol. 24, No. 41, p. 44.

Dixon, R. T. (1976). *The Ontario separate school system and section 93 of the "BNA Act."* Unpublished doctoral dissertation, University of Toronto, Toronto, Ontario.

Duke, W. R. and Peters, F. (1992). *Changing boundaries of Catholic school districts*. Report prepared for the Alberta Catholic School Trustees' Association, October 1992.

Egan, K., (1997, December 3). Abolish separate schools? It's just a matter of time. *The Ottawa Citizen*, p. A1.

Elburg, (2001, May 30). School board supports religion, residents' rights. *Olds Alberta*, p. 4, 12.

Elhav, M. (1998). Effects of changes in the recapture provision on equity of education funding: Evidence from Alberta. *Journal of Education Finance*, Vol. 24, No. 2, Fall 1998.

Evans, J. (1999). Board games: the new (but old) rules. In *Contested classrooms*, edited by J. L. Kachur and T. W. Harrison. Edmonton: University of Alberta Press.

Fenske, M. R. (1968). *The evolution of the formal structure of separate schools in the prairie provinces*. Unpublished doctoral dissertation, University of Alberta, Edmonton, Alberta.

Gillmor, D. and Turgeon, P. (2001). *Canada: a people's history*, Toronto: McClelland & Stewart.

Ginsburg, M. B. and Gorostiaga, J. M. (2001). Relationships between theorists/researchers and policy makers/practitioners: Rethinking the two-cultures thesis and the possibility of dialogue. *Comparative Education Review*, Vol. 45. No. 2, May 2001.

Gonzalez, R. (2001, November 5). Trustees battle to protect Catholic school rights. *Western Catholic Reporter*, p. 9.

Government of Alberta (1972). *A Choice of Futures*. Report of the Commission on Educational Planning. W. H. Worth, Commissioner. Edmonton, Alberta: L. S. Wall, Queen's Printer.

Goyette, L., (1997, September 5). Nfld. vote a lesson in tolerance. *Edmonton Journal*, p. A16.

Green, M. (1994). Epistemology and educational research: The influence of recent approaches to knowledge. In *Review of Research in Education, 20*. Washington, DC: AERA.

Greenfield, T. (1993). Organizations as talk, chance, action and experience. In *Greenfield On Educational Administration*, edited by T. Greenfield and P. Ribbins. New York: Routledge.

Guba, E. G. (1981). Criteria for assessing the trustworthiness of naturalistic inquires. *Educational, Communication and Technology Journal (ECTJ)*, Vol. 29.

Haughey, M. (1994). Designs for existence forged in the fire of life: Notes on the work of Thom Greenfield. Unpublished, University of Alberta.

Hillier, N. (2001, May 29). Amendments to the School Act could negatively impact public education. *Carstairs Courier*, p. 2.

Hobbs, D. S. (1989). Access and excellence: Two views of reality. In *Key Issues in Minority Education*, edited by W. E. Ward and M. M. Cross. Center for Research on Minority Education, University of Oklahoma, Norman.

Hunter, M. (2004). Education finance adequacy lawsuits: Trends and rulings. *School Business Affairs*, Vol. 70, No. 11, December 2004.

Ibbitson, J. (1998, July 22). Ontario: Justice Peter Cummings' detonation of the Ontario government's education reforms might one day lead to the end of Ontario's Roman Catholic schools. *Southam News*.

Jefferson, A. L. (1982). *The fiscal equalizing effects of the existing and alternative educational finance plan in Alberta*. Unpublished doctoral dissertation, University of Alberta, Edmonton, Alberta.

Jennings, W. H. (1963). *Canadian law for business and personal use*, Toronto: Ryerson Press.

Kachur, J. L. and Harrison, T. W. (1999). Introduction: Public education, globalization, and democracy: Whither Alberta? In *Contested classrooms*, edited by J. L. Kachur and T. W. Harrison. Edmonton: University of Alberta Press.

Kahn, L. (1992). *Schooling, jobs, and cultural identity: Minority education in Quebec*, New York: Garland.

Kennedy, J. F. (1960, September 12). Speech to the Greater Houston Ministerial Association. In *The Kennedy men*, by L. Leamer (2001), p. 444. New York: William Morrow-Harper Collins.

Klemperer, A., Theisens, H., and Kaiser, F. (2001). Dancing in the dark: The relationship between policy research and policy making in Dutch higher education. *Comparative Education Review*, Vol. 45, No. 2, May 2001.

Knapp, S. (2000, March 12). School districts look at Catholic boundaries. *Calgary Herald*, p. D3.

Ksiazek, K. (1995). *Catholic education in Alberta: Theological foundations for a Catholic organizational culture*. Unpublished masters thesis, Newman Theological College, Edmonton, Alberta.

Lakeland Catholic Division expands boundary, asks for Waskatenau School transfer (2004, July 6). *Redwater Review*, p. Al.

Lawton. S. B. (1998). The domestication of education: Viewpoints. *Education Canada*, Vol. 38, No. 3, Fall 1998.

Leonard, V. W. (1994). A Heideggerian phenomenological perspective on the concept of person. In *Interpretive phenomenology*, edited by P. Benner. Thousand Oaks, CA: Sage.

Logan, S. (2001, May 28). Proposed changes for separate school zones discussed. *Innisfail Booster*, p. 4.

Lord, C. (2002, November 30). Public schools need $240 M boost: Boards' association calls for building public schools before Catholic schools. *Edmonton Journal*, B5.

MacAfee M. (1997, September 23). Newfoundland RCs ask court to halt school changes, *Edmonton Journal*, p. A3.

Marcus, G. E. (1998). *Ethnography through thick & thin*, Princeton, NJ: Princeton University Press.

Martin, Y. M. (1996). Religion in schools: legally speaking. *Education Canada*, Vol. 36, No. 4.

Maybank, R. C. (1998). Have constitutionally protected denominational guarantees inhibited the modernization of educational governance structures? *Education & Law Journal*, Vol. 8, No. 3.

Milne, T. A. (1982). *An examination of the equalizing effects of the Alberta School Supplementary Requisition Equalization Grant*. Unpublished masters dissertation, University of Alberta, Edmonton, Alberta.

Minority rights and secular school, (1997, September 5). *Globe and Mail* editorial, p. A20.

Neu, D., Peters, F. and Taylor, A. (2002). Financial reforms in Alberta: The impact on school districts. *Journal of Education Finance*, Vol. 27, No. 4. Spring 2002.

No surprises for new Catholic division, (1998, February 4). *Sherwood Park News*, p. A4.

Pal, L. A. (2001). *Beyond policy analysis: Public issue management in turbulent times*, Second Edition, Toronto: Nelson.

Peacock, S. (2002). *Unusual heroes: Canada's Prime Ministers & Fathers of Confederation, the prophet Thomas D'Arcy McGee*. Toronto: Puffin Canada/Peguin Books.

Peshkin, P. (2000). The nature of interpretation in qualitative research. *Educational Researcher*, December 2000.

Peters, F. (1999). Deep and brutal: Funding cuts to education in Alberta. In *Contested classrooms*, edited by J. L. Kachur and T. W. Harrison. Edmonton, University of Alberta Press.

Plager, K. A. (1994). Hermeneutic phenomenology: A methodology for family health and health promotion study in nursing. In *Interpretive phenomenology*, edited by P. Benner. Thousand Oaks, CA: Sage.

Quebec: Linguistic school boards welcomed, (1997, November 27). *Montreal Gazette* editorial, p. B3.

Quebec maps out linguistic boards: Seeks amendment, (1997, March 25). *Montreal Gazette*, p. A1.

Roman Catholics to guard rights, (1997, November 3). *Fort McMurray Today*, p. 14.

Roosevelt, T. (1910, April 23). *Citizenship in a republic*, speech at the Sorbonne, Paris. In *The Oxford dictionary of quotations* (5th ed.), edited by E. Knowles (1999), p. 633. Oxford University Press.

Rule, J. B. (1997). *Theory and progress in social science*, Cambridge University Press.

Schmidt, R. J. (1988). *The fiscal equalization effects of the Alberta Education Equity Grant*. Unpublished doctoral dissertation, University of Alberta, Edmonton, Alberta.

Separate school division is expanded, (1998, February 6). *Grove Examiner* (Spruce Grove), p. 2.

Smith, R. (2000, June 27). Catholic schools under scrutiny. *Barrhead Leader*, p. A1.

Smith, S. (2004). Education finance what does the future hold? *Headfirst Colorado*, Fall, 2004.

Smith, W. J. and Foster, W. F. (2001, March). Religion and education in Canada: Part I The traditional framework. *Education & Law Journal*, Vol. 10, No. 3.

Smith, W. J. and Foster, W. F. (2001, May). Religion and education in Canada: Part II An alternative framework for the debate. *Education & Law Journal*, Vol. 11, No. 1.

Sparby, H. T. (1958). *A history of the Alberta school system to 1925*. Unpublished doctoral dissertation, Stanford University, Stanford, California.

Steel, K., (1997, October 27). Equal funding for all; an Alberta task force hears the pros and cons, *Alberta Report*, Vol. 24, No. 46, p. 40.

Steier, F. (1991). Introduction: Research as self-reflexivity, self-reflexivity as social process. In *Research and Reflexivity*, edited by F. Steier.

Supreme Court of Canada (2004). *Judges of the Court: Sir Charles Fitzpatrick.* *http://www.scc-csc.gc.ca/aboutcourt/judges/fitzpatrick/index_e.asp*

Sweet, L. (1997). *God in the classroom*, Toronto: McClelland & Stewart.

Taylor, A. (2001a). The politics of education reform in Alberta. *ATA Magazine*, Summer 2001.

Taylor, A. (2001b). 'Fellow travellers' and 'true believers': A case study of religion and politics in Alberta schools. *Journal of Education Policy*, Vol. 16, No. 1.

Taylor, A. (2001c). Devolution and control in Alberta. *Encounters on Education*, Vol. 2, Fall 2001.

Taylor, I. (2001, June 26). The minister speaks on Bill 16 and other things. *Carstairs Courier*, p. 5.

Tortora, A. (1998, August 23). Foundations aid Kentucky schools' bills. *The Cincinnati Enquirer*.

Unland, K. (2000, March 11). Proposal calls for extension of Catholic school districts. *Edmonton Journal*, p. B4.

Vandezande, G. (1999). The place of values and faiths in a public education system. *Education Canada*, Vol. 38, No. 4.

Victor, C. (2001, May 16). Bill 16 could create havoc, say trustees. *Sundre Roundup*, p. 14.

Watts, D. W. (2005, September 17). Centenniel of a sly schism. *Edmonton Journal*, p. A19.

Waugh, N. (2001, June 22). I detect a note of hypocrisy from Booi. *The Edmonton Sun*, p. 11.

Weimer, D. and Vining, A. (1999). *Policy analysis: Concepts and practice*, Upper Saddle River, New Jersey: Prentice Hall.

Wells, P., (1997, June 20). Quebec school system gets support of Federal Government. *The Ottawa Citizen*, p. A5.

Wikipedia (2006). *Northwest Territories: History* *http://en.wikipedia.org/wiki/Northwest_Territories*

Young, J. and Levin, B. (1998). *Understanding Canadian schools*, Toronto: Harcourt.

Yu, C., (1999, July 26). Better no school than a shared one. *Alberta Report*, p. 50.

Statutes

The Alberta Act (1905), Statutes of Canada, 1905, 4 & 5 Edward VII, Chapter 3.

The Alberta Statutes (1955), Chapter 52, Section 19

The Alberta Statutes (1978), Chapter 12, Section 2(4), amending the *School Act* (1970).

The Alberta Statutes (1979), Chapter 68, Section 11, amending the *School Act* (1970).

An Act respecting the Appointment of a Commission for the Ottawa Separate Schools (1917, Statutes of Ontario, 7 George V, Chapter 59.

An Act respecting the Board of Trustees of the Roman Catholic Separate Schools of the City of Ottawa (1915), Statutes of Ontario, 5 George V, Chapter 45.

An Act respecting Municipal Taxation and providing amendments to certain legislation (1979), Statutes of Quebec, Chapter 72, amending the *Education Act* (1977).

An Act respecting Provincial Aid for Superior Education,--and Normal and Common Schools (1861),C.S.L.C., Chapter 15.

Act respecting public elementary and secondary education (Bill 3) (1984), Statutes of Quebec, Chapter 39, intended to replace the *Education Act* (1977).

An Act respecting the Roman Catholic Separate Schools of the City of Ottawa (1917), Statutes of Ontario, 7 George V, Chapter 60.

An Act to amend the Education Act and various legislation (1985), Statutes of Quebec, Chapter 8.

An Act to amend the Education Act of Ontario (Bill 30) (1986), Statutes of Ontario, 1986, Chapter 21.

An Act to amend the law concerning education with respect to persons professing the Jewish religion (1903), Statutes of Quebec, 3 Edward VII, Chapter 16.

An Act to improve the Common and Grammar Schools of the Province of Ontario (1871), Statutes of Ontario, 34 Victoria, Chapter 33.

An Act to incorporate the Ruthenain Greek Catholic Episcopal Corporation of Canada (1913), Statutes of Canada, 3 & 4 George V, Chapter 191.

An Act to restore to the Roman Catholics in Upper Canada certain Rights in respect to Separate Schools (1863) [also known as the *Separate Schools Act* or the *Scott Act*], Statutes of Canada, 1863, 26 Victoria, Chapter 5.

Assessment and Taxation in School Districts Ordinance, North-West Territories (1901), Chapter 30.

The British North America Act (1871), Statutes of Great Britain, 1871, 34 & 35 Victoria, Chapter 28.

The Charter of Rights and Freedoms (1982), the *Constitution Act* (1982), Statutes of Canada, 1982.

The City Act (1915), Statutes of Saskatchewan, 1915, Chapter 16.

The Consolidated Statutes of Lower Canada (1861), 24 Victoria, Chapter 15.

Constitution Act (1867), formerly known as the *British North America Act*, Statutes of Great Britain, 1867, 30 & 31 Victoria, Chapter 3.
The Constitution Act (1982), Statutes of Canada, 1982.

The County Act (1980), Revised Statutes of Alberta, 1980, Chapter C-27.

The Development Charges Act (1990), Revised Statutes of Ontario, 1990, Chapter c. D.9.

The Education Act (1925), Statutes of Quebec, 1925, Chapter 133.

The Education Act (1977), Statutes of Quebec, 1977, Chapter I-14.

The Education Act (Bill 107) (1988), Statutes of Quebec, 1988, Chapter 84.

The Education Act (1978), Statutes of Saskatchewan, Chapter E-0.1.

The Education Act (1990), Revised Statutes of Ontario, 1990, Chapter c. E.2.

The Education Appeals Act (1925), Statutes of Quebec, 1925, Chapter 19.

The Education Quality Improvement Act (Bill 160) (1997), Statutes of Ontario, 1997, Chapter 31.

The Individual Rights Protection Act (1972), Statutes of Alberta, 1972, Chapter 2.

The Interpretation Act (1970), Statutes of Alberta, 1970, Chapter 189.

The Larger School Units Act (1944), 2nd Session, 1944, Chapter 29.

The Larger School Units Act (1965), Revised Statutes of Saskatchewan, 1965, Chapter 185.

The Municipal Taxation Act (1970), Statutes of Alberta, 1970, Chapter 251.

The Northwest Territories Act (1875), Statutes of Canada, 1875, 38 Victoria, Chapter 49.

The Saskatchewan Act (1905), Statutes of Canada, 1905, 4 & 5 Edward VII, Chapter 42.

The Saskatchewan Bill of Rights (1953), Statutes of Saskatchewan, 1915, Chapter 345.

The Saskatchewan Statutes (1912-1913), Chapter 38, Section 3, amending the *School Assessment Act* (1909).

The Saskatchewan Statutes (1915), Chapter 25, Section 43, amending the *School Assessment Act* (1909).

The School Act (1871), Statutes of Manitoba, 1871, 34 Victoria, Chapter 12.

The School Act (1915), Statutes of Saskatchewan, 1915, Chapter 23.

The School Act (1965), Revised Statutes of Saskatchewan, 1965, Chapter 184.

The School Act (1970), Statutes of Alberta, 1970, Chapter 329.

The School Act (1980), Statutes of Alberta, 1980, Chapter S-3.

The School Act (1988), Statutes of Alberta, 1988, Chapter S–3.1.

The School Act (2000), Revised Statutes of Alberta, 2000, Chapter S-3, with amendments in force as of January 1, 2002.

The School Amendment Act (Bill 19) (1994), Statutes of Alberta, 1994, Chapter 29.

The School Assessment Act (1909), Statutes of Saskatchewan, 1909, Chapter 101.

The School Attendance Act (1910), Second Session of Alberta, 1910, Chapter 8, as amended 1916, Chapter 9.

School Ordinance, North-West Territories (1901), Chapter 29.

The Supreme Court Act (1922), Statutes of Canada, 1922, 12 & 13 George V, Chapter 48.

Court Cases

Adler v. Ontario, [1996] 3 S.C.R. 609, Supreme Court of Canada (*Adler Case*).

Bintner v. the Board of Trustees for the Regina Public School District, [1965] S.J. No. 106, [1965] S.J. 129, Saskatchewan Court of Queen's Bench (*Bintner Case*).

Re Calgary Board of Education and Attorney General for Alberta et al., [1979] 106 D.L.R. (3d) 415, Alberta Court of Queen's Bench, affirmed [1981] 122 D.L.R. (3d) 249, Alberta Court of Appeal (*Calgary Public Case*).

Calgary Roman Catholic Separate School District No. 1 v. Calgary Board of Education, [1985] A.J. No. 613, Alberta Court of Appeal (*Calgary Separate Case*).

City of Regina v. McCarthy, [1918] 43 D.L.R. 112, Judicial Committee of the Privy Council (*Bartz Revisited*).

Concluding observations of the Human Rights Committee: Canada. 02/11/2005. CCPR/C/CAN/CO/5. Eighty-fifth session, Human Rights Committee, United Nations (*Waldman* decision 2005).

Ecoles Dissidents de St. Romuald v. Shannon, [1930] S.C.R. 599, Supreme Court of Canada (*Shannon Case*).

Edmonton Roman Catholic Separate School District No. 7 v. Alberta (Minister of Education), [1997] 47 Alta. L.R. (3d) 82, Alberta Court of Appeal (*Capital Reserves Case*).

Hogan v. Newfoundland (Attorney General), [2000] N.J. No. 54, Newfoundland Court of Appeal (*Hogan Case*).

Jacobi v. Newell (County No. 4), [1994] A.J. No. 125, Alberta Court of Queen's Bench (*Jacobi Case*).

Jones v. Edmonton Catholic School District No. 7, [1977] 2 S.C.R. 872, Supreme Court of Canada (*Jones Case*).

Mackell v. Ottawa Separate School Trustees, [1915] 34 O.L.R. 335, Ontario Supreme Court, Appellate Division; affirmed [1917] 32 D.L.R. 1, Privy Council (*Mackell Case*).

McCarthy v. City of Regina and the Regina Board of P. S. Trustees, [1917] 32 D.L.R. 741, Saskatchewan Supreme Court (*Bartz Case*).

McCarthy v. City of Regina and Regina Board of P. S. Trustees, [1917] 32 D.L.R. 755, Saskatchewan Supreme Court (*Neida Case*).

Ontario English Catholic Teachers' Assn. v. Ontario (Attorney General). [2001] 1 S.C.R. 470, Supreme Court of Canada (*Bill 160 Case*).

Ontario Home Builders' Assn. v. York Region Board of Education, [1996] 2 S.C.R. 929, Supreme Court of Canada (*Ontario Home Builders' Case*).

Ottawa Separate School Trustees v. City of Ottawa and Quebec Bank, [1916] 36 O.L.R. 485, Ontario Supreme Court, Appellate Division; reversed [1917] A.C. 76, Privy Council (*Ottawa Commission Case*).

Ottawa Separate School Trustees v. Quebec Bank, [1918] 41 O.L.R. 594, Ontario Supreme Court, Appellate Division, affirmed [1920] A.C. 230, Privy Council (*Ottawa Bank Case*).

Pander v. the Town of Melville [1922] Saskatchewan Local Government Board (*Roschko Case*).

Perron v. School Trustees of the Municipality of Rouyn and Attorney General of Quebec, [1955] 1 D.L.R. (2d) 414, Quebec Court of Queen's Bench, Appeal Side (*Perron Case*).

Protestant School Board of Greater Montreal et al. v. Attorney-General of Quebec et al., [1987] 6 Q.A.C. 237, Quebec Court of Appeal; [1989] 1 S.C.R. 377, Supreme Court of Canada; [1989] 2 S.C.R. 167, Supreme Court of Canada (*Greater Montreal Case*).

Public School Boards' Assn. of Alberta v. Alberta (Attorney General), [1995]198 A.R. 204, Alberta Court of Queen's Bench; [1998] 60 Alta. L.R. (3d) 62, Alberta Court of Appeal; [2000] 2 S.C.R. 409, Supreme Court of Canada (*PSBAA Case*).

Quebec Association of Protestant School Boards v. the Attorney General of Quebec, [1985] 21 D.L.R. (4th) 36, C.S. 872, Quebec Superior Court (*QAPSB Case*).

Quebec (Attorney General) v. Greater Hull School Board et al., [1984]2 S.C.R. 575, Supreme Court of Canada (*Greater Hull Case)*.

Regina Public School District 4 v. Gratton Separate School District No. 13, [1915] 50 S.C.R. 589, Supreme Court of Canada (*Gratton Case*).

Reference re: Alberta Act, s. 17, [1927] S.C.R. 364, Supreme Court of Canada (*Alberta Act, s. 17 Reference*).

Reference re Bill 30, an Act to amend the Education Act (Ontario), [1986] 13 O.A.C. 241, Ontario Court of Appeal; [1987] 1 S.C.R. 1148, Supreme Court of Canada (*Bill 30-Ontario*).

Reference re the Education Act of Quebec (1988) (Bill 107), [1993] 2 S.C.R. 511, Supreme Court of Canada (*Reference re Education Act-Quebec*).

Reference re: Educational System in Island of Montreal, [1926] S.C.R. 246, Supreme Court of Canada; affirmed with minor variations [1928] 1 D.L.R. 1041, Privy Council (*Hirsch Case*).

Rex ex Rel Brooks v. Ulmer, [1923] 1 D.L.R. 304, Alberta Supreme Court, Appellate Division (*Ulmer Case*).

Schmidt v. Calgary Board of Education et al., [1976] 72 D.L.R. (3d) 330; reversing [1975] 57 D.L.R. (3d) 746; Alberta Supreme Court, Appellate Division (*Schmidt Case*).

Starland School Division No. 30 v. Alberta (Province) et al, [1988] A.J. No. 903, Alberta Court of Queen's Bench (*Starland Case*).

St. Walburg Roman Catholic Separate School Board District No. 25 v. Turtleford School Board of Education Division No. 65, [1987] S.J. No. 79 C.A. No. 8730, Saskatchewan Court of Appeal (*St. Walburg Case*).

Tiny (Township) Roman Catholic Separate Sect. No. 2 v. the King, [1927] S.C.R. 637, Supreme Court of Canada; [1928] A.C. 363, Judicial Committee of the Privy Council (*Tiny Case*).

Waldman v. Canada, CCPR/C/67/D/694/1996: Canada. 05/11/99. Sixty-seventh session, Human Rights Committee, United Nations (*Waldman* decision 1999).

APPENDICES

APPENDIX A-1

1973 ASSESSMENTS, REQUISTIONS, AND INSTRUCTION EXPENDITURES
A COMPARISON OF PUBLIC URBAN AND SEPARATE URBAN JURISDICTIONS

	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Exp. Per Enrolled Student
Public Urban Boards								
Calgary SD No. 19	81,297	861,794,900	10,601	15.60	13,440,700	165	60,043,558	739
Edmonton SD No. 7	70,615	996,177,040	14,107	13.41	13,360,284	189	53,599,176	759
Fort McMurray SD No. 2833	1,634	20,262,200	12,400	15.51	314,267	192	1,059,664	649
Grande Prairie SD No. 2357	3,267	21,809,603	6,676	14.28	311,432	95	2,197,349	673
Lethbridge SD No. 51	7,708	74,800,370	9,704	14.89	1,113,777	144	5,339,024	693
Medicine Hat SD No. 76	5,210	45,850,810	8,801	18.51	848,606	163	3,968,005	762
Red Deer SD No. 104	5,748	48,952,220	8,516	15.42	754,843	131	4,254,921	740
St. Albert SD No. 3	2,233	11,336,110	5,077	23.95	271,497	122	1,441,240	645
Public Total/Weighted Average	177,712	2,080,983,253	11,710	14.62	30,415,406	171	131,902,937	742
Mean Average			9,485	16.45		150		707
Separate Urban Boards								
Calgary RCSSD No. 1	21,878	131,853,110	6,027	15.75	2,077,236	95	14,506,555	663
Edmonton RCSSD No. 7	30,599	302,958,380	9,901	13.42	4,064,267	133	21,719,684	710
Fort McMurray RCSSD No. 32	932	2,888,610	3,099	15.50	44,783	48	513,151	551
Grande Prairie RCSSD No. 28	999	4,549,730	4,554	16.89	76,833	77	556,362	557
Lethbridge RCSSD No. 9	2,270	19,569,360	8,621	15.00	293,540	129	1,463,233	645
Medicine Hat RCSSD No. 21	1,818	9,204,070	5,063	19.34	177,988	98	1,211,310	666
Red Deer RCSSD No. 17	1,343	5,591,250	4,163	13.78	77,047	57	830,531	618
St. Albert Prot. SSD No. 6	3,394	16,338,600	4,814	23.95	391,309	115	1,871,072	551
SeparateTotal/Weighted Average	63,233	492,953,110	7,796	15.82	7,203,003	114	42,671,898	675
Mean Average			5,780	16.70		94		620
Provincial Total/Weighted Average	416,382	3,906,938,848	9,383	14.41	56,298,795	135	291,953,178	701

APPENDIX A-2

1973 ASSESSMENTS, REQUISITIONS, AND INSTRUCTION EXPENDITURES
A COMPARISON OF PUBLIC RURAL AND SEPARATE RURAL JURISDICTIONS

PUBLIC RURAL JURISDICTIONS

	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Exp. Per Enrolled Student
Zone 1								
East Smoky School Div. No. 54	1,830	17,014,360	9,297	12.00	204,172	112	1,133,368	619
Fairview School Div. No. 50	1,549	10,759,330	6,946	12.51	134,599	87	1,014,698	655
Fort Vermilion School Div. No. 52	2,175	5,113,430	2,351	20.00	102,269	47	1,426,586	656
High Prairie School Div. No. 48	3,685	16,283,550	4,419	16.50	268,679	73	2,521,850	684
Northland School Div. No. 61	2,376	2,237,610	942	21.50	48,109	20	1,758,930	740
Peace River School Div. No. 10	3,070	22,289,620	7,260	16.10	358,863	117	1,976,393	644
Spirit River School Div. No. 47	1,858	12,403,700	6,676	20.58	255,262	137	1,274,276	686
County of Grande Prairie No. 1	2,789	17,137,330	6,145	18.62	319,097	114	1,758,663	631
Grovedale SD No. 4910	80	174,650	2,183	21.50	3,755	47	37,327	467
Falher Consolidated SD No. 69	490	2,039,540	4,162	9.00	18,356	37	349,209	713
Zone Total/Weighted Average	19,902	105,453,120	5,299	16.25	1,713,161	86	13,251,300	666
Mean Average			5,038	16.83		79		649
Zone 2								
Bonnyville School Div. 46	2,906	9,814,910	3,377	12.00	117,780	41	1,810,521	623
Lac La Biche School Div. 51	2,219	5,724,370	2,580	14.07	80,570	36	1,501,518	677
Westlock School Div. No. 37	2,633	16,941,360	6,434	15.00	254,155	97	1,695,462	644
County of Athabasca No. 12	2,387	11,565,270	4,845	19.46	225,054	94	1,622,562	680
County of Barrhead No. 11	2,374	11,769,460	4,958	9.64	113,457	48	1,430,238	602
County of Lac St. Anne No. 28	3,582	22,731,700	6,346	9.18	208,700	58	2,233,542	624
County of St. Paul No. 19	1,701	8,376,920	4,925	17.61	147,500	87	1,153,686	678
County of Smoky Lake No. 13	1,196	8,140,180	6,806	18.41	149,861	125	907,316	759
County of Thorhild No. 7	1,510	18,915,580	12,527	12.33	233,210	154	1,034,807	685
Bonnyville SD No. 2665	735	3,595,170	4,891	10.00	35,950	49	508,234	691
St. Paul SD No. 2228	1,062	4,738,290	4,462	12.00	56,859	54	742,121	699
Swan Hills SD No. 5109	424	2,144,170	5,057	14.48	31,048	73	214,347	506
Zone Total/Weighted Average	22,729	124,457,380	5,476	13.29	1,654,144	73	14,854,354	654
Mean Average			5,601	13.68		76		656

APPENDIX A-2 continued: *PUBLIC RURAL JURISDICTIONS*

	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Exp. Per Enrolled Student
Zone 3								
Sturgeon School Div. No. 24	2,028	17,326,049	8,543	22.19	384,465	190	1,340,163	661
Wainwright School Div. No. 32	1,931	14,452,890	7,485	12.21	176,521	91	1,230,655	637
Yellowhead School Div. No. 12	5,030	27,982,950	5,563	20.67	578,407	115	3,181,049	632
County of Beaver No. 9	2,093	16,701,030	7,979	18.66	311,664	149	1,488,866	711
County of Lamont No. 30	1,799	15,065,900	8,375	14.24	214,538	119	1,270,020	706
County of Leduc No. 25	5,240	37,122,700	7,084	10.70	397,213	76	3,250,782	620
County of Minburn No. 27	2,088	19,620,340	9,397	19.62	384,951	184	1,692,832	811
County of Parkland No. 31	6,470	42,955,160	6,639	10.11	434,277	67	3,932,342	608
County of Strathcona No. 20	10,523	97,634,850	9,278	10.58	1,032,977	98	6,740,325	641
County of Two Hills No. 21	1,450	14,353,340	9,899	10.38	149,057	103	1,104,803	762
County of Vermilion River No. 24	2,298	23,873,260	10,389	7.32	174,853	76	1,516,891	660
County of Wetaskiwin No. 10	2,236	15,960,560	7,138	18.80	300,058	134	1,483,671	664
Devon SD No. 4972	621	3,445,170	5,548	6.65	22,911	37	420,917	678
Grande Cache SD No. 5258	913	10,489,410	11,489	18.00	188,809	207	521,906	572
Jasper SD No. 3063	749	12,532,810	16,733	13.53	169,519	226	542,867	725
Legal SD No. 1738	389	2,294,140	5,898	17.52	40,190	103	226,482	582
Wetaskiwin SD No. 264	1,579	10,617,910	6,724	9.34	99,171	63	1,174,670	744
Thibault RC Public SD No. 35	635	1,995,920	3,143	20.96	41,834	66	386,546	609
Zone Total/Weighted Average	48,072	384,424,389	7,997	13.27	5,101,415	106	31,505,787	655
Mean Average			8,184	14.53		117		668
Zone 4								
Neutral Hills School Div. No. 16	677	8,691,820	12,839	21.11	183,484	271	517,330	764
Provost School Div. No. 33	1,007	11,572,880	11,492	7.18	83,070	82	696,932	692
Rocky Mtn. House S Div. No. 15	2,849	20,172,770	7,081	10.48	211,396	74	1,614,334	567
County of Camrose No. 22	2,381	20,343,770	8,544	14.09	286,720	120	1,572,641	660
County of Flagstaff No. 29	2,457	21,150,490	8,608	17.48	369,711	150	1,725,605	702
County of Lacombe No. 14	3,536	29,332,780	8,295	15.06	441,671	125	2,629,394	744
County of Paintearth No. 18	1,219	12,269,010	10,065	14.14	173,440	142	865,866	710
County of Ponoka No. 3	3,500	21,650,970	6,186	19.87	430,111	123	2,581,389	738
County of Red Deer No. 23	4,276	34,389,550	8,042	18.71	643,428	150	3,025,810	708
County of Stettler No. 6	1,024	16,385,400	16,001	16.61	272,134	266	722,150	705
Camrose SD No. 1315	1,700	16,111,000	9,477	5.29	85,201	50	1,269,683	747
Stettler SD No. 1475	1,408	8,169,160	5,802	21.08	172,205	122	1,160,710	824
Lousana Consolidated SD No. 38	47	488,870	10,401	2.84	1,387	30	21,805	464
Zone Total/Weighted Average	26,081	220,728,470	8,463	15.19	3,353,958	129	18,403,649	706
Mean Average			9,449	14.15		131		694

APENDIX A-2 continued: ***PUBLIC RURAL JURISDICTIONS***

	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Exp. Per Enrolled Student
Zone 5								
Acadia School Division No. 8	949	14,052,760	14,808	15.05	211,494	223	671,431	708
Berry Creek School Div. No. 1	204	5,589,840	27,401	19.98	111,685	547	159,412	781
Calgary School Div. No. 41	4,796	48,199,780	10,050	10.79	520,076	108	3,018,626	629
Drumheller Valley S Div. No. 62	1,600	9,944,740	6,215	10.75	106,889	67	1,266,546	792
Foothills School Div. No. 38	3,452	31,886,190	9,237	13.56	432,377	125	2,299,665	666
Starland School Div. No. 30	642	11,014,690	17,157	7.02	77,363	121	434,050	676
Sullivan Lake School Div. No. 9	215	6,159,990	28,651	18.07	111,311	518	168,862	785
Three Hills School Div. No. 60	1,966	24,382,620	12,402	12.30	300,000	153	1,419,527	722
County of Mountain View No. 17	4,161	37,376,560	8,983	13.10	489,506	118	3,417,019	821
County of Wheatland No. 16	1,913	23,098,040	12,074	10.39	240,000	125	1,284,034	671
Banff SD No. 102	617	13,138,790	21,295	6.88	90,395	147	470,097	762
Canmore SD No. 168	448	4,122,870	9,203	21.45	88,436	197	339,603	758
Exshaw SD No. 1699	227	2,283,430	10,059	14.33	32,732	144	171,416	755
Hanna SD No. 2912	815	3,738,950	4,588	8.94	33,430	41	569,996	699
Seebe SD No. 4152	15	423,200	28,213	16.06	6,796	453	12,748	850
Zone Total/Weighted Average	22,020	235,412,450	10,691	12.12	2,852,490	130	15,703,032	713
Mean Average			14,689	13.25		206		738
Zone 6								
Cardston School Div. No. 2	2,840	16,748,000	5,897	7.19	120,354	42	1,711,610	603
Crowsnest Pass School Div. No. 63	1,588	7,456,050	4,695	20.37	151,903	96	1,066,263	671
Medicine Hat School Div. No. 4	769	22,234,770	28,914	23.19	515,624	671	654,442	851
Pincher Creek School Div. No. 29	1,643	18,775,300	11,427	10.85	203,800	124	1,000,455	609
Taber School Div. No. 6	2,824	21,309,810	7,546	19.24	410,000	145	1,895,784	671
Willow Creek School Div. No. 28	3,038	24,815,150	8,168	17.50	434,332	143	1,975,273	650
County of Forty Mile No. 8	1,265	16,408,250	12,971	19.84	325,540	257	925,652	732
County of Lethbridge No. 26	3,154	21,655,490	6,866	16.12	349,056	111	2,038,660	646
County of Newell No. 4	1,555	13,372,670	8,600	15.47	206,875	133	1,043,987	671
County of Vulcan No. 2	1,644	22,231,700	13,523	8.38	186,333	113	1,105,693	673
County of Warner No. 5	1,883	16,485,286	8,755	21.84	360,000	191	1,376,963	731
Brooks SD No. 2092	1,482	9,204,600	6,211	11.95	110,000	74	831,018	561
Redcliff SD No. 2283	544	3,905,420	7,179	9.84	38,429	71	324,951	597
Stirling SD No. 647	181	994,370	5,494	12.70	12,630	70	108,859	601
Waterton Park SD No. 4233	18	1,363,980	75,777	1.65	2,256	125	24,415	1,356
Barons Consolidated SD No. 8	61	1,249,010	20,476	20.29	25,341	415	53,222	872
Zone Total/Weighted Average	24,489	218,209,856	8,911	15.82	3,452,473	141	16,137,247	659
Mean Average			14,531	14.78		174		719

APENDIX A-2 continued: *PUBLIC RURAL JURISDICTIONS*

	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Exp. Per Enrolled Student
Public Rural Total/Weighted Aver.	163,293	1,288,685,665	7,892	14.07	18,127,641	111	109,855,369	673
Mean Average			10,007	14.44		136		690
Provincial Total/Weighted Average	416,382	3,906,938,848	9,383	14.41	56,298,795	135	291,953,178	701

APPENDIX A-3

1973 ASSESSMENTS, REQUISITIONS, AND INSTRUCTION EXPENDITURES
A COMPARISON OF PUBLIC RURAL AND SEPARATE RURAL JURISDICTIONS
SEPARATE RURAL JURISDICTIONS

	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Expenditures Per Enrolled Student
Zone 1								
Beaverlodge RCSSD No. 68	126	121,760	966	22.14	2,696	21	77,084	612
Fort Vermilion RCSSD No. 26	134	122,930	917	20.00	2,459	18	64,038	478
Grimshaw RCSSD No. 88	192	671,750	3,499	16.22	10,898	57	110,197	574
High Prairie RCSSD No. 56	400	1,074,820	2,687	7.67	8,243	21	243,147	608
McLennan RCSSD No. 30	214	724,470	3,385	9.14	6,624	31	120,488	563
Nampa RCSSD No. 96	75	191,810	2,557	5.84	1,120	15	47,295	631
Peace River RCSSD No. 43	547	2,550,630	4,663	16.23	41,397	76	330,274	604
Rosary RCSSD No. 37	210	613,650	2,922	13.44	8,246	39	121,253	577
St. Thomas More RCSSD No. 35	423	1,013,130	2,395	12.51	12,674	30	230,466	545
Sexsmith RCSSD No. 51	92	196,800	2,139	18.72	3,685	40	57,782	628
Spirit River RCSSD No. 36	76	310,030	4,079	11.09	3,437	45	45,576	600
Valleyview RCSSD No. 84	323	575,270	1,781	13.02	7,490	23	199,588	618
Zone Total/Weighted Average	2,812	8,167,050	2,904	13.34	108,969	39	1,647,188	586
Mean Average			2,666	13.84		35		586
Zone 2								
Cold Lake RCSSD No. 64	276	494,820	1,793	12.00	5,938	22	147,556	535
Grande Centre RCSSD No. 67	172	663,710	3,859	12.00	7,964	46	90,397	526
Westlock RCSSD No. 110	347	1,157,950	3,337	7.87	9,114	26	200,424	578
Whitecourt RCSSD No. 94	147	937,580	6,378	3.91	3,663	25	66,719	454
Glen Avon Prot. SSD No. 5	462	2,530,770	5,478	8.86	22,423	49	337,936	731
Zone Total/Weighted Average	1,404	5,784,830	4,120	8.49	49,102	35	843,032	600
Mean Average			4,169	8.93		34		565

APPENDIX A-3 1973 continued

SEPARATE RURAL JURISDICTIONS

	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Expenditures Per Enrolled Student
Zone 3								
Drayton Valley RCSSD No. 111	365	553,520	1,516	5.03	2,784	8	216,695	594
Fort Saskatchewan RCSSD No. 104	356	2,584,020	7,258	8.29	21,422	60	203,398	571
Sherwood Park RCSSD No. 105	1,781	4,159,550	2,336	10.58	44,008	25	851,292	478
St. Martin's RCSSD No. 16	225	2,439,500	10,842	19.62	47,863	213	155,904	693
Vermilion RCSSD No. 97	357	878,980	2,462	8.09	7,113	20	218,365	612
Wainwright RCSSD No. 31	257	1,361,200	5,296	9.19	12,509	49	147,222	573
Wetaskiwin RCSSD No. 15	200	806,890	4,034	8.31	6,703	34	112,033	560
Zone Total/Weighted Average	3,541	12,783,660	3,610	11.14	142,402	40	1,904,909	538
Mean Average			4,821	9.87		58		583
Zone 4								
Camrose RCSSD No. 60	484	2,764,950	5,713	5.06	14,000	29	270,111	558
Killam RCSSD No. 49	104	437,550	4,207	16.10	7,046	68	59,040	568
Ponoka RCSSD No. 95	246	640,850	2,605	19.95	12,785	52	116,061	472
Provost RCSSD No. 65	280	906,450	3,237	6.99	6,336	23	177,473	634
Theresetta RCSSD No. 23	173	359,600	2,079	11.15	4,010	23	122,081	706
Zone Total/Weighted Average	1,287	5,109,400	3,970	8.65	44,177	34	744,766	579
Mean Average			3,568	11.85		39		587

APPENDIX A-3 1973 continued

SEPARATE RURAL JURISDICTIONS

	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Expenditures Per Enrolled Student
Zone 5								
Assumption RCSSD No. 50	116	359,960	3,103	21.00	7,559	65	62,315	537
Drumheller RCSSD No. 25	280	1,802,730	6,438	13.60	24,524	88	178,505	638
St. Rita's RCSSD No. 27	99	572,120	5,779	10.11	5,784	58	70,500	712
Zone Total/Weighted Average	495	2,734,810	5,525	13.85	37,867	76	311,320	629
Mean Average			5,107	14.90		70		629
Zone 6								
Bow Island RCSSD No. 82	223	770,940	3,457	19.84	15,295	69	124,196	557
Coaldale RCSSD No. 73	223	594,580	2,666	17.35	10,316	46	110,621	496
Picture Butte RCSSD No. 79	178	697,520	3,919	16.00	11,160	63	108,290	608
Pincher Creek RCSSD No. 18	420	1,004,140	2,391	9.21	9,244	22	278,145	662
Taber RCSSD No. 54	565	2,279,360	4,034	20.10	45,816	81	316,772	561
Zone Total/Weighted Average	1,609	5,346,540	3,323	17.18	91,831	57	938,024	583
Mean Average			3,293	16.50		56		577
Separate Rural Total/Weighted Aver.	11,148	39,926,290	3,581	11.88	474,348	43	6,389,239	573
Mean Average			3,681	12.60		45		585
Provincial Total/Weighted Average	416,382	3,906,938,848	9,383	14.41	56,298,795	135	291,953,178	701

APPENDIX A-4

1973 ASSESSMENTS, REQUISITIONS, AND INSTRUCTION EXPENDITURES
A COMPARISON OF PUBLIC AND SEPARATE JURISDICTIONS
PUBLIC AND SEPARATE SYNOPSIS

	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Expenditures Per Enrolled Student
Public Urban Total/Weighted Aver.	177,712	2,080,983,253	11,710	14.62	30,415,406	171	131,902,937	742
Public Rural Boards								
Zone 1	19,902	105,453,120	5,299	16.25	1,713,161	86	13,251,300	666
Zone 2	22,729	124,457,380	5,476	13.29	1,654,144	73	14,854,354	654
Zone 3	48,072	384,424,389	7,997	13.27	5,101,415	106	31,505,787	655
Zone 4	26,081	220,728,470	8,463	15.19	3,353,958	129	18,403,649	706
Zone 5	22,020	235,412,450	10,691	12.12	2,852,490	130	15,703,032	713
Zone 6	24,489	218,209,856	8,911	15.82	3,452,473	141	16,137,247	659
Public Rural Total/Weighted Aver.	163,293	1,288,685,665	7,892	14.07	18,127,641	111	109,855,369	673
Public Total/Weighted Average	**341,005**	**3,369,668,918**	**9,882**	**14.41**	**48,543,047**	**142**	**241,758,306**	**709**
percentage of total	82.1	86.3			86.3		83.1	
percentage of variance from separate			37.9	0.0		37.9		7.5
Separate Urban Total/Weighted Aver.	63,233	492,953,110	7,796	15.82	7,203,003	114	42,671,898	675
Separate Rural Boards								
Zone 1	2,812	8,167,050	2,904	13.34	108,969	39	1,647,188	586
Zone 2	1,404	5,784,830	4,120	8.49	49,102	35	843,032	600
Zone 3	3,541	12,783,660	3,610	11.14	142,402	40	1,904,909	538
Zone 4	1,287	5,109,400	3,970	8.65	44,177	34	744,766	579
Zone 5	495	2,734,810	5,525	13.85	37,867	76	311,320	629
Zone 6	1,609	5,346,540	3,323	17.18	91,831	57	938,024	583
Separate Rural Total/Weighted Aver.	11,148	39,926,290	3,581	11.88	474,348	43	6,389,239	573
Separate Total/Weighted Average	**74,381**	**532,879,400**	**7,164**	**14.41**	**7,677,351**	**103**	**49,061,137**	**660**
percentage of total	17.9	13.7			13.7		16.9	
percentage of variance from public			-27.5	0.0		-27.5		-7.0
Provincial Total/Weighted Average	416,382	3,906,938,848	9,383	14.41	56,298,795	135	291,953,178	701

APPENDIX A-5

1973 ASSESSMENTS, REQUISITION, AND INSTRUCTION EXPENDITURES

A COMPARISON OF PUBLIC AND SEPARATE JURISDICTIONS

PUBLIC JURISDICTIONS AND THEIR RELATED SEPARATE JURISDICTIONS

School Divisions	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Exp. Per Enrolled Student	Percentage Var. Pub. From Sep.
Acadia School Division No. 8	**949**	**14,052,760**	**14,808**	**15.05**	**211,494**	**223**	**671,431**	**708**	
Assumption RCSSD No. 50	116	359,960	3,103	21.00	7,559	65	62,315	537	31.8
Bonnyville School Div. 46	**2,906**	**9,814,910**	**3,377**	**12.00**	**117,780**	**41**	**1,810,521**	**623**	
Cold Lake RCSSD No. 64	276	494,820	1,793	12.00	5,938	22	147,556	535	16.4
Grande Centre RCSSD No. 67	172	663,710	3,859	12.00	7,964	46	90,397	526	18.4
separate aggretate	*448*	*1,158,530*	*2,586*	*12.00*	*13,902*	*31*	*237,953*	*531*	17.3
Drumheller Valley S Div. No. 62	**1,600**	**9,944,740**	**6,215**	**10.75**	**106,889**	**67**	**1,266,546**	**792**	
Drumheller RCSSD No. 25	280	1,802,730	6,438	13.60	24,524	88	178,505	638	24.1
East Smoky School Div. No. 54	**1,830**	**17,014,360**	**9,297**	**12.00**	**204,172**	**112**	**1,133,368**	**619**	
Valleyview RCSSD No. 84	323	575,270	1,781	13.02	7,490	23	199,588	618	0.2
Fairview School Div. No. 50	**1,549**	**10,759,330**	**6,946**	**12.51**	**134,599**	**87**	**1,014,698**	**655**	
St. Thomas More RCSSD No. 35	423	1,013,130	2,395	12.51	12,674	30	230,466	545	20.2
Fort Vermilion School Div. No. 52	**2,175**	**5,113,430**	**2,351**	**20.00**	**102,269**	**47**	**1,426,586**	**656**	
Fort Vermilion RCSSD No. 26	134	122,930	917	20.00	2,459	18	64,038	478	37.2
High Prairie School Div. No. 48	**3,685**	**16,283,550**	**4,419**	**16.50**	**268,679**	**73**	**2,521,850**	**684**	
High Prairie RCSSD No. 56	400	1,074,820	2,687	7.67	8,243	21	243,147	608	12.5
McLennan RCSSD No. 30	214	724,470	3,385	9.14	6,624	31	120,488	563	21.5
separate aggregate	*614*	*1,799,290*	*2,930*	*8.26*	*14,867*	*24*	*363,635*	*592*	*15.5*
Peace River School Div. No. 10	**3,070**	**22,289,620**	**7,260**	**16.10**	**358,863**	**117**	**1,976,393**	**644**	
Grimshaw RCSSD No.	192	671,750	3,499	16.22	10,898	57	110,197	574	12.2
Nampa RCSSD No. 96	75	191,810	2,557	5.84	1,120	15	47,295	631	2.1
Peace River RCSSD No. 43	547	2,550,630	4,663	16.23	41,397	76	330,274	604	6.6
Rosary RCSSD No. 37	210	613,650	2,922	13.44	8,246	39	121,253	577	11.6
separate aggregate	*1,024*	*4,027,840*	*3,933*	*15.31*	*61,661*	*60*	*609,019*	*595*	*8.3*

APPENDIX A-5 1973 continued

PUBLIC JURISDICTIONS AND THEIR RELATED SEPARATE JURISDICTIONS

	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Exp. Per Enrolled Student	Percentage Var. Pub. From Sep.
Pincher Creek School Div. No. 29	**1,643**	**18,775,300**	**11,427**	**10.85**	**203,800**	**124**	**1,000,455**	**609**	
Pincher Creek RCSSD No. 18	420	1,004,140	2,391	9.21	9,244	22	278,145	662	-8.0
Provost School Div. No. 33	**1,007**	**11,572,880**	**11,492**	**7.18**	**83,070**	**82**	**696,932**	**692**	
Provost RCSSD No. 65	280	906,450	3,237	6.99	6,336	23	177,473	634	9.1
Spirit River School Div. No. 47	**1,858**	**12,403,700**	**6,676**	**20.58**	**255,262**	**137**	**1,274,276**	**686**	
Spirit River RCSSD No. 36	76	310,030	4,079	11.09	3,437	45	45,576	600	14.3
Taber School Div. No. 6	**2,824**	**21,309,810**	**7,546**	**19.24**	**410,000**	**145**	**1,895,784**	**671**	
Taber RCSSD No. 54	565	2,279,360	4,034	20.10	45,816	81	316,772	561	19.6
Wainwright School Div. No. 32	**1,931**	**14,452,890**	**7,485**	**12.21**	**176,521**	**91**	**1,230,655**	**637**	
Wainwright RCSSD No. 31	257	1,361,200	5,296	9.19	12,509	49	147,222	573	11.2
Westlock School Div. No. 37	**2,633**	**16,941,360**	**6,434**	**15.00**	**254,155**	**97**	**1,695,462**	**644**	
Westlock RCSSD No. 110	347	1,157,950	3,337	7.87	9,114	26	200,424	578	11.4
Aggregate for Divs. with Sep. Dists.	***29,660***	***200,728,640***	***6,768***	***14.39***	***2,887,553***	***97***	***19,614,957***	***661***	
Aggregate for Sep. Dists. in Divs.	*5,307*	*17,878,810*	*3,369*	*12.95*	*231,592*	*44*	*3,111,131*	*586*	*12.8*
percentage public of total	84.8	91.8			92.6		86.3		
percentage var. public from sep.			*100.9*	*11.1*		*123.1*		*12.8*	
Counties									
County of Flagstaff No. 29	**2,457**	**21,150,490**	**8,608**	**17.48**	**369,711**	**150**	**1,725,605**	**702**	
Killam RCSSD No. 49	104	437,550	4,207	16.10	7,046	68	59,040	568	23.6
County of Forty Mile No. 8	**1,265**	**16,408,250**	**12,971**	**19.84**	**325,540**	**257**	**925,652**	**732**	
Bow Island RCSSD No. 82	223	770,940	3,457	19.84	15,295	69	124,196	557	31.4
County of Grande Prairie No. 1	**2,789**	**17,137,330**	**6,145**	**18.62**	**319,097**	**114**	**1,758,663**	**631**	
Beaverlodge RCSSD No. 68	126	121,760	966	22.14	2,696	21	77,084	612	3.1
Sexsmith RCSSD No. 51	92	196,800	2,139	18.72	3,685	40	57,782	628	0.5
separate aggregate	*218*	*318,560*	*1,461*	*20.03*	*6,381*	*29*	*134,866*	*619*	*2.0*

APPENDIX A-5 1973 continued

PUBLIC JURISDICTIONS AND THEIR RELATED SEPARATE JURISDICTIONS

	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Exp. Per Enrolled Student	Percentage Var. Pub. From Sep.
County of Lac St. Anne No. 28	**3,582**	**22,731,700**	**6,346**	**9.18**	**208,700**	**58**	**2,233,542**	**624**	
Whitecourt RCSSD No. 94	147	937,580	6,378	3.91	3,663	25	66,719	454	37.4
County of Lethbridge No. 26	**3,154**	**21,655,490**	**6,866**	**16.12**	**349,056**	**111**	**2,038,660**	**646**	
Coaldale RCSSD No. 73	223	594,580	2,666	17.35	10,316	46	110,621	496	30.2
Picture Butte RCSSD No. 79	178	697,520	3,919	16.00	11,160	63	108,290	608	6.3
separate aggregate	*401*	*1,292,100*	*3,222*	*16.62*	*21,476*	*54*	*218,911*	*546*	*18.3*
County of Minburn No. 27	**2,088**	**19,620,340**	**9,397**	**19.62**	**384,951**	**184**	**1,692,832**	**811**	
St. Martin's RCSSD No. 16	225	2,439,500	10,842	19.62	47,863	213	155,904	693	17.0
County of Paintearth No. 18	**1,219**	**12,269,010**	**10,065**	**14.14**	**173,440**	**142**	**865,866**	**710**	
Theresetta RCSSD No. 23	173	359,600	2,079	11.15	4,010	23	122,081	706	0.6
County of Parkland No. 31	**6,470**	**42,955,160**	**6,639**	**10.11**	**434,277**	**67**	**3,932,342**	**608**	
Drayton Valley RCSSD No. 111	365	553,520	1,516	5.03	2,784	8	216,695	594	2.4
County of Ponoka No. 3	**3,500**	**21,650,970**	**6,186**	**19.87**	**430,111**	**123**	**2,581,389**	**738**	
Ponoka RCSSD No. 95	246	640,850	2,605	19.95	12,785	52	116,061	472	56.4
County of Strathcona No. 20	**10,523**	**97,634,850**	**9,278**	**10.58**	**1,032,977**	**98**	**6,740,325**	**641**	
Fort Saskatchewan RCSSD No. 104	356	2,584,020	7,258	8.29	21,422	60	203,398	571	12.3
Sherwood Park RCSSD No. 105	1,781	4,159,550	2,336	10.58	44,008	25	851,292	478	34.1
separate aggregate	*2,137*	*6,743,570*	*3,156*	*9.70*	*65,430*	*31*	*1,054,690*	*494*	*29.9*
County of Vermilion River No. 24	**2,298**	**23,873,260**	**10,389**	**7.32**	**174,853**	**76**	**1,516,891**	**660**	
Vermilion RCSSD No. 97	357	878,980	2,462	8.09	7,113	20	218,365	612	7.8
County of Wheatland No. 16	**1,913**	**23,098,040**	**12,074**	**10.39**	**240,000**	**125**	**1,284,034**	**671**	
St. Rita's RCSSD No. 27	99	572,120	5,779	10.11	5,784	58	70,500	712	-5.8
Aggregate for Ctys. with Sep. Dists.	***41,258***	***340,184,890***	***8,245***	***13.06***	***4,442,713***	***108***	***27,295,801***	***662***	
Aggregate for Sep. Dists. in Ctys.	*4,695*	*15,944,870*	*3,396*	*12.52*	*199,630*	*43*	*2,558,028*	*545*	*21.4*
percentage public of total	*89.8*	*95.5*			*95.7*		*91.4*		
percentage var. public from sep.			*142.8*	*4.3*		*153.3*		*21.4*	

APPENDIX A-5 1973 continued

PUBLIC JURISDICTIONS AND THEIR RELATED SEPARATE JURISDICTIONS

School Districts	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Exp. Per Enrolled Student	Percentage Var. Pub. From Sep.
Calgary SD No. 19	**81,297**	**861,794,900**	**10,601**	**15.60**	**13,440,700**	**165**	**60,043,558**	**739**	
Calgary RCSSD No. 1	21,878	131,853,110	6,027	15.75	2,077,236	95	14,506,555	663	11.5
Camrose SD No. 1315	**1,700**	**16,111,000**	**9,477**	**5.29**	**85,201**	**50**	**1,269,683**	**747**	
Camrose RCSSD No. 60	484	2,764,950	5,713	5.06	14,000	29	270,111	558	33.9
Edmonton SD No. 7	**70,615**	**996,177,040**	**14,107**	**13.41**	**13,360,284**	**189**	**53,599,176**	**759**	
Edmonton RCSSD No. 7	30,599	302,958,380	9,901	13.42	4,064,267	133	21,719,684	710	6.9
Fort McMurray SD No. 2833	**1,634**	**20,262,200**	**12,400**	**15.51**	**314,267**	**192**	**1,059,664**	**649**	
Fort McMurray RCSSD No. 32	932	2,888,610	3,099	15.50	44,783	48	513,151	551	17.8
Grande Prairie SD No. 2357	**3,267**	**21,809,603**	**6,676**	**14.28**	**311,432**	**95**	**2,197,349**	**673**	
Grande Prairie RCSSD No. 28	999	4,549,730	4,554	16.89	76,833	77	556,362	557	20.8
Lethbridge SD No. 51	**7,708**	**74,800,370**	**9,704**	**14.89**	**1,113,777**	**144**	**5,339,024**	**693**	
Lethbridge RCSSD No. 9	2,270	19,569,360	8,621	15.00	293,540	129	1,463,233	645	7.4
Medicine Hat SD No. 76	**5,210**	**45,850,810**	**8,801**	**18.51**	**848,606**	**163**	**3,968,005**	**762**	
Medicine Hat RCSSD No. 21	1,818	9,204,070	5,063	19.34	177,988	98	1,211,310	666	14.4
Red Deer SD No. 104	**5,748**	**48,952,220**	**8,516**	**15.42**	**754,843**	**131**	**4,254,921**	**740**	
Red Deer RCSSD No. 17	1,343	5,591,250	4,163	13.78	77,047	57	830,531	618	19.7
St. Albert SD No. 3	**2,233**	**11,336,110**	**5,077**	**23.95**	**271,497**	**122**	**1,441,240**	**645**	
St. Albert Prot. SSD No. 6	3,394	16,338,600	4,814	23.95	391,309	115	1,871,072	551	17.1
St. Paul SD No. 2228	**1,062**	**4,738,290**	**4,462**	**12.00**	**56,859**	**54**	**742,121**	**699**	
Glen Avon Prot. SSD No. 5	462	2,530,770	5,478	8.86	22,423	49	337,936	731	-4.4
Wetaskiwin SD No. 264	**1,579**	**10,617,910**	**6,724**	**9.34**	**99,171**	**63**	**1,174,670**	**744**	
Wetaskiwin RCSSD No. 15	200	806,890	4,034	8.31	6,703	34	112,033	560	32.9

APPENDIX A-5 1973 continued

PUBLIC JURISDICTIONS AND THEIR RELATED SEPARATE JURISDICTIONS

	Sept. 30 Enrolled Students	Total Equalized Assessment	Equalized Assess. Per Enrol. Student	Equalized Mill Rate	1973 Supp. Requisition	Supp. Req. Per Enrolled Student	Total Instruction Expenditures	Inst. Exp. Per Enrolled Student	Percentage Var. Pub. From Sep.
Agg. for Pub. Dists. with Sep. Dists.	***182,053***	***2,112,450,453***	***11,603***	***14.51***	***30,656,637***	***168***	***135,089,411***	***742***	
Agg. For Sep. Dists. In Pub. Dists.	*64,379*	*499,055,720*	*7,752*	*14.52*	*7,246,129*	*113*	*43,391,978*	*674*	*10.1*
percentage public of total	*73.9*	*80.9*			*80.9*		*75.7*		
percentage var. public from sep.			*49.7*	*-0.1*		*49.6*		*10.1*	
Aggregate for Public with Separate	***252,971***	***2,653,363,983***	***10,489***	***14.32***	***37,986,903***	***150***	***182,000,169***	***719***	
Aggregate for Separate Districts	*74,381*	*532,879,400*	*7,164*	*14.41*	*7,677,351*	*103*	*49,061,137*	*660*	*9.1*
percentage public of total	*77.3*	*83.3*			*83.2*		*78.8*		
percentage var. public from sep.			*46.4*	*-0.6*		*45.5*		*9.1*	

APPENDIX B-1

1983 ASSESSMENTS, REQUISITIONS, AND EQUITY
A COMPARISON OF PUBLIC URBAN AND SEPARATE URBAN JURISDICTIONS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1983 Supp. Requisition	Supp. Req. Per Res. Student	Fiscal Equalization Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Public Urban Boards									
Calgary SD No. 19	77,228	5,131,355,990	66,444	22.92	117,619,694	1,523	0	5,131,355,990	66,444
Edmonton SD No. 7	58,303	4,252,457,770	72,937	22.33	94,950,000	1,629	0	4,252,457,770	72,937
Fort McMurray SD No. 2833	4,509	388,232,088	86,102	33.00	12,810,593	2,841	188,283	393,938,108	87,367
Grande Prairie SD No. 2357	3,272	166,599,280	50,917	24.97	4,159,440	1,271	320,219	179,425,106	54,837
Lethbridge SD No. 51	7,775	348,968,132	44,883	25.07	8,748,967	1,125	338,014	362,450,422	46,617
Medicine Hat SD No. 76	5,160	235,426,614	45,625	24.65	5,803,923	1,125	211,668	244,012,579	47,289
Red Deer SD No. 104	6,906	302,673,540	43,828	25.40	7,687,907	1,113	371,377	317,294,683	45,945
St. Albert SD No. 3	3,197	91,014,880	28,469	26.33	2,396,780	750	910,332	125,583,659	39,282
Public Total/Weighted Average	166,350	10,916,728,294	65,625	23.28	254,177,304	1,528	2,339,893	11,017,224,978	66,229
Mean Average			54,901	25.58		1,422			57,590
Separate Urban Boards									
Calgary RCSSD No. 1	23,216	1,167,375,870	50,283	22.48	26,247,981	1,131	2,112,976	1,261,350,229	54,331
Edmonton RCSSD No. 7	24,988	1,462,914,240	58,545	22.43	32,811,000	1,313	206,721	1,472,131,121	58,914
Fort McMurray RCSSD No. 32	3,242	240,789,887	74,272	34.36	8,274,579	2,552	106,352	243,884,726	75,227
Grande Prairie RCSSD No. 28	1,194	48,782,820	40,857	24.97	1,218,107	1,020	179,033	55,952,744	46,862
Lethbridge RCSSD No. 9	1,940	86,923,130	44,806	25.13	2,184,508	1,126	245,475	96,690,755	49,841
Medicine Hat RCSSD No. 21	1,816	70,316,677	38,721	24.23	1,703,997	938	367,073	85,464,212	47,062
Red Deer RCSSD No. 17	1,767	61,562,630	34,840	25.26	1,554,964	880	425,744	78,418,274	44,379
St. Albert PSSD No. 6	5,050	139,168,350	27,558	27.93	3,886,910	770	1,685,591	199,519,868	39,509
SeparateTotal/Weighted Average	63,213	3,277,833,604	51,854	23.76	77,882,046	1,232	5,328,965	3,502,114,571	55,402
Mean Average			46,235	25.85		1,216			52,015
Provincial Total/Weighted Average	408,819	22,570,037,534	55,208	23,05	520,178,223	1,272	36,188,067	24,140,203,286	59,049

APPENDIX B-2

1983 ASSESSMENTS, REQUISITIONS, AND EQUITY
A COMPARISON OF PUBLIC RURAL AND SEPARATE RURAL JURISDICTIONS

PUBLIC RURAL JURISDICTIONS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1983 Supp. Requisition	Supp. Req. Per Res. Student	Fiscal Equalization Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Zone 1									
East Smoky School Div. No. 54	1,754	193,619,772	110,388	18.31	3,545,309	2,021	56,738	196,718,401	112,154
Fairview School Div. No. 50	1,559	53,927,324	34,591	26.75	1,442,673	925	432,244	70,084,667	44,955
Fort Vermilion School Div. No. 52	2,211	77,867,699	35,218	33.63	2,618,561	1,184	847,138	103,058,896	46,612
High Prairie School Div. No. 48	3,356	99,962,719	29,786	32.94	3,292,893	981	1,141,262	134,608,136	40,110
Northland School Div. No. 61	1,529	111,743,852	73,083	31.28	3,495,035	2,286	677,419	133,402,407	87,248
Peace River School Div. No. 10	2,799	116,064,564	41,466	24.34	2,825,100	1,009	370,956	131,304,678	46,911
Spirit River School Div. No. 47	1,430	56,446,450	39,473	35.51	2,004,615	1,402	402,062	67,767,812	47,390
County of Grande Prairie No. 1	3,408	132,556,509	38,896	21.79	2,888,350	848	583,519	159,336,242	46,754
Grovedale SD No. 4910	229	13,925,456	60,810	10.09	140,502	614	51,218	19,001,782	82,977
Falher Consolidated SD No. 69	287	8,250,094	28,746	38.76	319,806	1,114	128,227	11,557,989	40,272
Zone Total/Weighted Average	18,562	864,364,439	46,566	26.11	22,572,844	1,216	4,690,783	1,043,984,961	56,243
Mean Average			49,246	27.34		1,238			59,538
Zone 2									
Lac La Biche School Div. 51	2,073	37,791,999	18,231	23.94	904,612	436	991,369	79,208,447	38,210
Westlock School Div. No. 37	2,398	66,840,484	27,873	23.55	1,574,117	656	755,269	98,910,874	41,247
County of Athabasca No. 12	1,914	66,466,460	34,726	38.34	2,548,177	1,331	411,130	77,190,344	40,329
County of Barrhead No. 11	2,222	55,908,468	25,161	31.25	1,747,102	786	746,035	79,782,102	35,906
County of Lac St. Anne No. 28	2,461	118,574,583	48,181	14.58	1,728,806	702	112,446	126,286,980	51,315
County of St. Paul No. 19	1,758	40,923,395	23,278	23.95	980,000	557	768,637	73,020,574	41,536
County of Smoky Lake No. 13	832	33,166,810	39,864	29.79	988,124	1,188	152,225	38,276,308	46,005
County of Thorhild No. 7	832	26,656,866	32,040	22.24	592,830	713	247,308	37,777,181	45,405
Lakeland SD No. 5460	2,173	78,839,298	36,281	27.01	2,129,403	980	423,761	94,528,681	43,501
St. Paul SD No. 2228	621	24,576,126	39,575	18.15	446,000	718	109,362	30,602,346	49,279
Swan Hills SD No. 5109	475	100,768,625	212,144	6.93	698,415	1,470	34,384	105,729,613	222,589
Whitecourt SD No. 2736	758	31,057,241	40,973	14.85	461,200	608	22,293	32,558,453	42,953
Zone Total/Weighted Average	18,517	681,570,355	36,808	21.71	14,798,786	799	4,774,219	901,450,968	48,682
Mean Average			48,194	22.88		846			58,190

APPENDIX B-2 1983 continued: *PUBLIC RURAL JURISDICTIONS*

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1983 Supp. Requisition	Supp. Req. Per Res. Student	Fiscal Equalization Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Zone 3									
Sturgeon School Div. No. 24	4,120	172,190,517	41,794	28.15	4,847,820	1,177	427,199	187,364,269	45,477
Wainwright School Div. No. 32	1,452	70,697,184	48,690	25.37	1,793,730	1,235	139,852	76,209,241	52,486
Yellowhead School Div. No. 12	4,772	289,683,334	60,705	20.41	5,912,405	1,239	253,756	302,116,326	63,310
County of Beaver No. 9	1,796	76,143,368	42,396	20.87	1,588,810	885	119,266	81,859,165	45,579
County of Lamont No. 30	1,790	61,090,800	34,129	26.16	1,598,099	893	356,546	74,720,544	41,743
County of Leduc No. 25	6,503	298,120,862	45,844	21.31	6,352,524	977	131,562	304,295,003	46,793
County of Minburn No. 27	1,637	79,576,462	48,611	31.42	2,500,000	1,527	172,476	85,066,474	51,965
County of Parkland No. 31	9,796	521,746,547	53,261	21.98	11,467,309	1,171	67,000	524,794,953	53,572
County of Strathcona No. 20	11,892	589,163,136	49,543	23.14	13,631,649	1,146	130,388	594,798,537	50,017
County of Two Hills No. 21	949	47,049,324	49,578	25.88	1,217,457	1,283	158,866	53,188,792	56,047
County of Vermilion River No. 24	2,418	94,238,978	38,974	29.02	2,735,200	1,131	407,228	108,269,671	44,777
County of Wetaskiwin No. 10	2,381	104,185,451	43,757	20.19	2,103,850	884	215,542	114,859,378	48,240
Devon SD No. 4972	840	26,879,140	31,999	27.11	728,820	868	259,663	36,455,604	43,400
Grande Cache SD No. 5258	1,027	84,579,172	82,356	13.91	1,176,392	1,145	77,910	90,180,675	87,810
Jasper SD No. 3063	421	46,562,840	110,601	19.20	893,830	2,123	66,020	50,002,061	118,770
Legal SD No. 1738	381	11,401,684	29,926	20.58	234,610	616	154,188	18,894,983	49,593
Wetaskiwin SD No. 264	1,489	60,186,790	40,421	24.42	1,469,494	987	168,144	67,073,547	45,046
Thibault RC Public SD No. 35	1,169	32,431,816	27,743	30.65	993,983	850	318,731	42,831,416	36,639
Zone Total/Weighted Average	54,833	2,665,927,405	48,619	22.97	61,245,982	1,117	3,624,337	2,823,688,274	51,496
Mean Average			48,907	23.88		1,119			54,515
Zone 4									
Neutral Hills School Div. No. 16	576	46,421,467	80,593	17.25	800,680	1,390	86,148	51,416,117	89,264
Provost School Div. No. 33	779	50,752,360	65,151	30.14	1,529,625	1,964	119,490	54,716,992	70,240
Rocky Mtn. House S Div. No. 15	2,854	233,515,612	81,820	12.55	2,930,004	1,027	32,343	236,093,286	82,724
County of Camrose No. 22	2,093	79,279,466	37,878	27.16	2,152,900	1,029	422,726	94,846,140	45,316
County of Flagstaff No. 29	1,804	81,208,036	45,016	23.69	1,924,105	1,067	233,084	91,045,490	50,469
County of Lacombe No. 14	3,633	184,549,764	50,798	19.10	3,524,559	970	193,951	194,705,250	53,594
County of Paintearth No. 18	952	116,966,740	122,864	15.04	1,759,324	1,848	85,779	122,669,663	128,855
County of Ponoka No. 3	2,560	98,427,692	38,448	25.25	2,485,000	971	504,761	118,420,634	46,258
County of Red Deer No. 23	5,018	201,550,693	40,166	20.98	4,228,479	843	393,238	220,294,405	43,901
County of Stettler No. 6	1,158	66,447,526	57,381	22.20	1,475,120	1,274	161,360	73,716,069	63,658
Camrose SD No. 1315	1,636	65,156,440	39,827	22.54	1,468,890	898	246,972	76,111,526	46,523
Stettler SD No. 1475	979	36,098,423	36,873	31.58	1,140,013	1,164	179,342	41,777,273	42,673
Lousana Consolidated SD No. 38	47	1,556,436	33,116	20.82	32,410	690	24,745	2,744,773	58,399
Zone Total/Weighted Average	24,089	1,261,930,655	52,386	20.17	25,451,109	1,057	2,683,939	1,395,007,170	57,911
Mean Average			56,148	22.18		1,164			63,221

APPENDIX B-2 1983 continued: *PUBLIC RURAL JURISDICTIONS*

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1983 Supp. Requisition	Supp. Req. Per Res. Student	Fiscal Equalization Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Zone 5									
Acadia School Division No. 8	648	59,049,584	91,126	22.30	1,316,788	2,032	138,276	65,250,385	100,695
Berry Creek School Div. No. 1	171	49,796,707	291,209	9.10	453,083	2,650	63,142	56,736,415	331,792
Drumheller Valley S Div. No. 62	988	40,892,549	41,389	26.64	1,089,269	1,102	267,006	50,916,295	51,535
Foothills School Div. No. 38	4,780	226,279,945	47,339	26.07	5,900,000	1,234	204,970	234,141,064	48,983
Mount Rundle School Div. No. 64	655	59,509,796	90,855	19.05	1,133,777	1,731	29,500	61,058,195	93,219
Rangeland School Div. No. 9	832	59,209,622	71,165	15.64	926,129	1,113	69,812	63,672,869	76,530
Rocky View School Div. No. 41	7,566	430,040,520	56,839	18.64	8,014,279	1,059	2,802	430,190,873	56,858
Starland School Div. No. 30	569	33,110,181	58,190	32.82	1,086,762	1,910	107,035	36,371,197	63,921
Three Hills School Div. No. 60	1,529	96,407,443	63,053	20.27	1,954,283	1,278	103,133	101,495,134	66,380
County of Mountain View No. 17	4,192	196,351,431	46,840	19.51	3,830,503	914	191,876	206,186,987	49,186
County of Wheatland No. 16	2,062	156,425,952	75,861	17.02	2,662,919	1,291	159,553	165,798,460	80,407
Banff SD No. 102	362	88,379,690	244,143	11.34	1,001,919	2,768	23,010	90,409,412	249,750
Exshaw SD No. 1699	74	28,054,679	379,117	8.03	225,199	3,043	21,537	30,737,700	415,374
Zone Total/Weighted Average	24,428	1,523,508,099	62,367	19.43	29,594,910	1,212	1,381,652	1,594,633,776	65,279
Mean Average			119,779	18.96		1,702			129,587
Zone 6									
Cardston School Div. No. 2	2,291	52,597,664	22,958	21.82	1,147,621	501	941,802	95,762,250	41,799
Crowsnest Pass School Div. No. 63	1,394	41,090,003	29,476	21.88	898,990	645	443,608	61,365,928	44,021
Cypress School Div. No. 4	1,129	223,056,716	197,570	10.92	2,436,000	2,158	125,379	234,537,269	207,739
Pincher Creek School Div. No. 29	1,210	77,066,564	63,691	18.95	1,460,635	1,207	56,775	80,062,148	66,167
Taber School Div. No. 6	2,510	80,402,185	32,033	30.55	2,456,186	979	680,049	102,663,295	40,902
Willow Creek School Div. No. 28	2,742	92,987,348	33,912	29.99	2,788,726	1,017	590,838	112,688,265	41,097
County of Forty Mile No. 8	1,061	53,260,184	50,198	25.71	1,369,235	1,291	144,510	58,881,300	55,496
County of Lethbridge No. 26	3,241	83,477,958	25,757	28.01	2,337,902	721	1,191,043	126,005,762	38,879
County of Newell No. 4	1,746	132,953,087	76,147	15.29	2,033,170	1,164	179,381	144,683,172	82,866
County of Vulcan No. 2	1,165	64,036,074	54,967	28.18	1,804,558	1,549	155,727	69,562,162	59,710
County of Warner No. 5	1,742	47,522,709	27,281	29.94	1,423,000	817	635,680	68,751,968	39,467
Brooks SD No. 2092	1,912	64,273,017	33,616	26.39	1,696,000	887	507,236	83,495,651	43,669
Redcliff SD No. 2283	833	21,879,414	26,266	24.60	538,166	646	341,223	35,752,010	42,920
Stirling SD No. 647	268	3,656,661	13,644	32.19	117,724	439	149,760	8,308,402	31,001
Barons Consolidated SD No. 8	107	3,812,491	35,631	17.62	67,160	628	41,616	6,174,918	57,710
Zone Total/Weighted Average	23,351	1,042,072,075	44,626	21.66	22,575,073	967	6,184,627	1,327,556,294	56,852
Mean Average			48,210	24.14		977			59,563

APPENDIX B-2 1983 continued: *PUBLIC RURAL JURISDICTIONS*

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1983 Supp. Requisition	Supp. Req. Per Res. Student	Fiscal Equalization Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Public Rural Total/Weighted Aver.	163,780	8,039,373,028	49,086	21.92	176,238,704	1,076	23,339,557	9,104,039,306	55,587
Mean Average			61,251	23.14		1,168			70,060
Provincial Total/Weighted Average	408,819	22,570,037,534	55,208	23.05	520,178,223	1,272	36,188,067	24,140,203,286	59,049

APPENDIX B-3

1983 ASSESSMENTS, REQUISITIONS, AND EQUITY
A COMPARISON OF PUBLIC RURAL AND SEPARATE RURAL JURISDICTIONS
SEPARATE RURAL JURISDICTIONS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1983 Supp. Requisition	Supp. Req. Per Res. Student	Fiscal Equalization Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Zone 1									
Beaverlodge RCSSD No. 68	81	1,460,710	18,033	22.44	32,780	405	78,993	4,980,718	61,490
Fairview RCSSD No. 35	292	8,188,889	28,044	29.54	241,930	829	86,230	11,107,617	38,040
Fort Vermilion RCSSD No. 26	184	1,417,247	7,702	42.36	60,038	326	163,652	5,280,389	28,698
Grimshaw RCSSD No. 88	181	3,436,711	18,987	32.01	110,000	608	89,379	6,229,164	34,415
High Prairie RCSSD No. 56	231	5,382,648	23,302	17.52	94,300	408	166,415	14,881,623	64,423
Manning RCSSD No. 37	140	4,118,343	29,417	23.04	94,895	678	81,870	7,671,415	54,796
McLennan RCSSD No. 30	177	2,325,051	13,136	34.69	80,665	456	145,369	6,515,100	36,808
Nampa RCSSD No. 96	47	1,325,349	28,199	25.56	33,876	721	35,809	2,726,324	58,007
Peace River RCSSD No. 43	547	16,406,304	29,993	30.93	507,424	928	180,866	22,254,160	40,684
Sexsmith RCSSD No. 51	102	2,750,306	26,964	21.98	60,450	593	77,380	6,270,880	61,479
Spirit River RCSSD No. 36	85	1,286,200	15,132	25.74	33,112	390	49,077	3,192,543	37,559
Valleyview RCSSD No. 84	183	2,338,620	12,779	15.30	35,772	195	124,480	10,476,589	57,249
Zone Total/Weighted Average	2,250	50,436,378	22,416	27.47	1,385,242	616	1,279,520	97,023,440	43,122
Mean Average			20,974	26.76		545			47,804
Zone 2									
Lakeland RCSSD No. 150	1,683	47,854,255	28,434	27.25	1,303,912	775	579,446	69,120,227	41,070
Westlock RCSSD No. 110	257	10,780,554	41,948	20.71	223,254	869	63,351	13,839,665	53,851
Whitecourt RCSSD No. 94	558	15,048,210	26,968	14.44	217,293	389	199,377	28,855,682	51,713
Glen Avon Prot. SSD No. 5	333	13,315,084	39,985	19.50	259,667	780	80,448	17,440,259	52,373
Zone Total/Weighted Average	2,831	86,998,103	30,731	23.04	2,004,126	708	922,622	127,048,661	44,878
Mean Average			34,334	20.47		703			49,752

APPENDIX B-3 1983 continued

SEPARATE RURAL JURISDICTIONS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1983 Supp. Requisition	Supp. Req. Per Res. Student	Fiscal Equalization Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Zone 3									
Drayton Valley RCSSD No. 111	325	9,288,460	28,580	20.63	191,579	589	80,072	13,170,647	40,525
Edson RCSSD No. 153	296	10,509,691	35,506	23.98	252,013	851	91,852	14,340,192	48,447
Fort Saskatchewan RCSSD No. 104	672	51,545,220	76,704	15.52	800,000	1,190	60,077	55,416,073	82,464
Hinton RCSSD No. 155	307	13,097,220	42,662	22.73	297,714	970	6,461	13,381,456	43,588
Leduc RCSSD No. 132	545	13,786,247	25,296	21.39	294,894	541	195,528	22,927,150	42,068
Sherwood Park RCSSD No. 105	2,659	86,856,485	32,665	21.47	1,865,112	701	837,370	125,852,006	47,331
Spruce Grove RCSSD No. 128	474	13,892,590	29,309	19.06	264,811	559	134,634	20,955,797	44,211
Stony Plain RCSSD No. 151	171	3,784,130	22,129	18.04	68,250	399	119,413	10,404,999	60,848
Vegreville RCSSD No. 16	329	16,298,899	49,541	28.87	470,476	1,430	37,004	17,580,844	53,437
Vermilion RCSSD No. 97	201	8,380,798	41,696	31.01	259,913	1,29[illegible]	69,099	10,608,870	52,780
Wainwright RCSSD No. 31	276	7,263,420	26,317	24.63	178,918	648	105,553	11,548,488	41,842
Wetaskiwin RCSSD No. 15	302	7,270,920	24,076	25.08	182,389	604	113,471	11,794,431	39,054
Zone Total/Weighted Average	6,557	241,974,080	36,903	21.18	5,126,069	782	1,850,534	329,327,813	50,225
Mean Average			36,207	22.70		815			49,716
Zone 4									
Camrose RCSSD No. 60	519	19,077,790	36,759	20.50	391,100	754	170,530	27,396,214	52,787
Killam RCSSD No. 49	51	1,463,106	28,688	25.37	37,123	728	41,445	3,096,552	60,717
Ponoka RCSSD No. 95	87	4,345,010	49,943	25.50	110,800	1,274	27,211	5,412,086	62,208
Provost RCSSD No. 65	144	4,101,292	28,481	29.70	121,814	846	86,556	7,015,501	48,719
Rocky Mtn. House RCSSD No. 131	299	5,135,957	17,177	12.86	66,030	221	143,220	16,275,920	54,435
Theresetta RCSSD No. 23	53	1,392,549	26,275	25.13	35,000	660	65,290	3,990,250	75,288
Zone Total/Weighted Average	1,153	35,515,704	30,803	21.45	761,867	661	534,252	60,420,754	52,403
Mean Average			31,220	23.18		747			59,025

APPENDIX B-3 1983 continued

SEPARATE RURAL JURISDICTIONSS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1983 Supp. Requisition	Supp. Req. Per Res. Student	Fiscal Equalization Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Zone 5									
Assumption RCSSD No. 50	48	1,543,199	32,150	23.33	35,999	750	41,857	3,337,518	69,532
Drumheller RCSSD No. 25	286	8,181,451	28,606	23.17	189,525	663	99,181	12,462,915	43,577
Zone Total/Weighted Average	334	9,724,650	29,116	23.19	225,524	675	141,038	15,806,243	47,324
Mean Average			30,378	23.25		706			56,554
Zone 6									
Bow Island RCSSD No. 82	123	3,928,681	31,940	26.19	102,887	836	94,731	7,545,930	61,349
Coaldale RCSSD No. 73	269	4,845,362	18,012	23.43	113,535	422	142,545	10,928,791	40,627
Picture Butte RCSSD No. 79	159	3,799,241	23,895	27.95	106,180	668	72,716	6,401,102	40,259
Pincher Creek RCSSD No. 18	211	5,291,651	25,079	19.41	102,707	487	124,120	11,686,539	55,386
Taber RCSSD No. 54	354	11,840,066	33,447	30.32	358,954	1,014	116,112	15,670,010	44,266
Zone Total/Weighted Average	1,116	29,705,001	26,617	26.40	784,263	703	550,224	50,545,465	45,292
Mean Average			26,475	25.46		685			48,377
Separate Rural Total/Weighted Aver.	14,241	454,353,916	31,905	22.64	10,287,091	722	5,278,190	687,477,770	48,275
Mean Average			29,365	24.10		694			50,693
Provincial Total/Weighted Average	408,819	22,570,037,534	55,208	23.05	520,178,223	1,272	36,188,067	24,140,203,286	59,049

APPENDIX B-4

1983 ASSESSMENTS, REQUISITIONS, AND EQUITY
A COMPARISON OF PUBLIC AND SEPARATE JURISDICTIONS
PUBLIC AND SEPARATE SYNOPSIS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1983 Supp. Requisition	Supp. Req. Per Res. Student	Fiscal Equalization Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Public Urban Total/Weighted Aver.	166,350	10,916,728,294	65,625	23.28	254,177,304	1,528	2,339,893	11,017,224,978	66,229
Public Rural Boards									
Zone 1	18,562	864,364,439	46,566	26.11	22,572,844	1,216	4,690,783	1,043,984,961	56,243
Zone 2	18,517	681,570,355	36,808	21.71	14,798,786	799	4,774,219	901,450,968	48,682
Zone 3	54,833	2,665,927,405	48,619	22.97	61,245,982	1,117	3,624,337	2,823,688,274	51,496
Zone 4	24,089	1,261,930,655	52,386	20.17	25,451,109	1,057	2,683,939	1,395,007,170	57,911
Zone 5	24,428	1,523,508,099	62,367	19.43	29,594,910	1,212	1,381,652	1,594,633,776	65,279
Zone 6	23,351	1,042,072,075	44,626	21.66	22,575,073	967	6,184,627	1,327,556,294	56,852
Public Rural Total/Weighted Aver.	163,780	8,039,373,028	49,086	21.92	176,238,704	1,076	23,339,557	9,104,039,306	55,587
Public Total/Weighted Average	**330,130**	**18,956,101,322**	**57,420**	**22.71**	**430,416,008**	**1,304**	**25,679,450**	**20,087,058,924**	**60,846**
percentage of total	81.0	83.6			83.0		70.8	82.8	
percentage of variance from separate			19.2	-3.9		14.5			12.7
Separate Urban Total/Weighted Aver.	63,213	3,277,833,604	51,854	23.76	77,882,046	1,232	5,328,965	3,502,114,571	55,402
Separate Rural Boards									
Zone 1	2,250	50,436,378	22,416	27.47	1,385,242	616	1,279,520	97,023,440	43,122
Zone 2	2,831	86,998,103	30,731	23.04	2,004,126	708	922,622	127,048,661	44,878
Zone 3	6,557	241,974,080	36,903	21.18	5,126,069	782	1,850,534	329,327,813	50,225
Zone 4	1,153	35,515,704	30,803	21.45	761,867	661	534,252	60,420,754	52,403
Zone 5	334	9,724,650	29,116	23.19	225,524	675	141,038	15,806,243	47,324
Zone 6	1,116	29,705,001	26,617	26.40	784,263	703	550,224	50,545,465	45,292
Separate Rural Total/Weighted Aver.	14,241	454,353,916	31,905	22.64	10,287,091	722	5,278,190	687,477,770	48,275
Separate Total/Weighted Average	**77,454**	**3,732,187,520**	**48,186**	**23.62**	**88,169,137**	**1,138**	**10,607,155**	**4,181,186,942**	**53,983**
percentage of total	19.0	16.4			17.0		29.2	17.2	
percentage of variance from public			-16.1	4.0		-12.7			-11.3
Provincial Total/Weighted Average	408,819	22,570,037,534	55,208	23.05	520,178,223	1,272	36,188,067	24,140,203,286	59,049

APPENDIX B-5

1983 ASSESSMENTS AND INSTRUCTION EXPENDITURES
A COMPARISON OF PUBLIC URBAN AND SEPARATE URBAN JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrolled Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student
Public Urban Boards				
Calgary SD No. 19	66,444	78,590	215,387,702	2,741
Edmonton SD No. 7	72,937	63,582	178,563,819	2,808
Fort McMurray SD No. 2833	87,367	4,795	14,392,752	3,002
Grande Prairie SD No. 2357	54,837	3,555	9,296,903	2,615
Lethbridge SD No. 51	46,617	7,561	19,776,138	2,616
Medicine Hat SD No. 76	47,289	5,715	14,388,114	2,518
Red Deer SD No. 104	45,945	6,955	16,661,445	2,396
St. Albert SD No. 3	39,282	3,043	7,029,810	2,310
Public Total/Weighted Average	66,229	173,796	475,496,683	2,736
Mean Average	57,590			2,626
Separate Urban Boards				
Calgary RCSSD No. 1	54,331	23,446	55,526,002	2,368
Edmonton RCSSD No. 7	58,914	25,395	66,714,340	2,627
Fort McMurray RCSSD No. 32	75,227	3,325	7,648,817	2,300
Grande Prairie RCSSD No. 28	46,862	1,407	3,034,022	2,156
Lethbridge RCSSD No. 9	49,841	2,153	5,061,836	2,351
Medicine Hat RCSSD No. 21	47,062	1,940	4,383,521	2,260
Red Deer RCSSD No. 17	44,379	1,715	3,952,540	2,305
St. Albert Prot. SSD No. 6	39,509	5,010	12,057,916	2,407
SeparateTotal/Weighted Averag	55,402	64,391	158,378,994	2,460
Mean Average	52,015			2,347
Provincial Total/Weighted Avera	59,049	422,381	1,077,321,403	2,551

APPENDIX B-6

1983 ASSESSMENTS AND INSTRUCTION EXPENDITURES

A COMPARISON OF PUBLIC RURAL AND SEPARATE RURAL JURISDICTIONS

PUBLIC RURAL JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrolled Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student
Zone 1				
East Smoky School Div. No. 54	112,154	1,865	4,665,755	2,502
Fairview School Div. No. 50	44,955	1,468	3,466,828	2,362
Fort Vermilion School Div. No. 52	46,612	2,747	5,931,462	2,159
High Prairie School Div. No. 48	40,110	3,471	8,951,694	2,579
Northland School Div. No. 61	87,248	2,483	8,888,053	3,580
Peace River School Div. No. 10	46,911	2,708	6,561,115	2,423
Spirit River School Div. No. 47	47,390	1,370	3,341,589	2,439
County of Grande Prairie No. 1	46,754	3,254	6,919,649	2,127
Grovedale SD No. 4910	82,977	120	255,741	2,131
Falher Consolidated SD No. 69	40,272	398	1,405,883	3,532
Zone Total/Weighted Average	56,243	19,884	50,387,769	2,534
Mean Average	59,538			2,583
Zone 2				
Lac La Biche School Div. 51	38,210	2,120	5,041,198	2,378
Westlock School Div. No. 37	41,247	2,240	4,996,022	2,230
County of Athabasca No. 12	40,329	1,942	4,623,702	2,381
County of Barrhead No. 11	35,906	2,334	5,444,713	2,333
County of Lac St. Anne No. 28	51,315	2,597	5,121,257	1,972
County of St. Paul No. 19	41,536	1,688	4,634,979	2,746
County of Smoky Lake No. 13	46,005	930	2,196,269	2,362
County of Thorhild No. 7	45,405	808	1,936,414	2,397
Lakeland SD No. 5460	43,501	2,947	6,563,269	2,227
St. Paul SD No. 2228	49,279	826	2,370,660	2,870
Swan Hills SD No. 5109	222,589	404	1,098,412	2,719
Whitecourt SD No. 2736	42,953	752	1,562,913	2,078
Zone Total/Weighted Average	48,682	19,588	45,589,808	2,327
Mean Average	58,190			2,391
Zone 3				
Sturgeon School Div. No. 24	45,477	4,187	10,197,419	2,435
Wainwright School Div. No. 32	52,486	1,560	3,810,822	2,443
Yellowhead School Div. No. 12	63,310	4,970	12,626,817	2,541
County of Beaver No. 9	45,579	1,821	4,160,638	2,285
County of Lamont No. 30	41,743	1,724	4,074,298	2,363
County of Leduc No. 25	46,793	6,315	15,092,623	2,390
County of Minburn No. 27	51,965	1,722	4,905,826	2,849
County of Parkland No. 31	53,572	10,134	22,061,063	2,177
County of Strathcona No. 20	50,017	11,832	31,005,137	2,620
County of Two Hills No. 21	56,047	910	2,257,005	2,480
County of Vermilion River No. 24	44,777	2,179	5,198,612	2,386
County of Wetaskiwin No. 10	48,240	2,190	4,985,295	2,276
Devon SD No. 4972	43,400	941	2,412,759	2,564
Grande Cache SD No. 5258	87,810	1,080	2,439,319	2,259
Jasper SD No. 3063	118,770	431	1,266,652	2,939
Legal SD No. 1738	49,593	381	889,390	2,334
Wetaskiwin SD No. 264	45,046	1,981	5,044,289	2,546
Thibault RC Public SD No. 35	36,639	1,205	2,725,304	2,262
Zone Total/Weighted Average	51,496	55,563	135,153,268	2,432
Mean Average	54,515			2,453

APPENDIX B-6 1983 continued: *PUBLIC RURAL JURISDICTIONS*

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrolled Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student
Zone 4				
Neutral Hills School Div. No. 16	89,264	570	1,438,330	2,523
Provost School Div. No. 33	70,240	750	2,073,409	2,765
Rocky Mtn. House S Div. No. 15	82,724	2,983	6,481,937	2,173
County of Camrose No. 22	45,316	1,887	4,610,262	2,443
County of Flagstaff No. 29	50,469	1,834	4,284,270	2,336
County of Lacombe No. 14	53,594	3,445	8,396,440	2,437
County of Paintearth No. 18	128,855	915	2,367,750	2,588
County of Ponoka No. 3	46,258	2,926	7,320,978	2,502
County of Red Deer No. 23	43,901	4,990	11,177,202	2,240
County of Stettler No. 6	63,658	865	2,511,214	2,903
Camrose SD No. 1315	46,523	1,886	4,692,783	2,488
Stettler SD No. 1475	42,673	1,290	3,277,886	2,541
Lousana Consolidated SD No. 38	58,399	23	91,410	3,974 *
Zone Total/Weighted Average	57,911	24,341	58,632,461	2,409
Mean Average	63,221			2,495
Zone 5				
Acadia School Division No. 8	100,695	648	1,891,015	2,918
Berry Creek School Div. No. 1	331,792	140	530,184	3,787
Drumheller Valley S Div. No. 62	51,535	1,224	2,925,341	2,390
Foothills School Div. No. 38	48,983	4,679	11,224,652	2,399
Mount Rundle School Div. No. 64	93,219	697	1,647,474	2,364
Rangeland School Div. No. 9	76,530	865	2,152,812	2,489
Rocky View School Div. No. 41	56,858	7,730	17,539,543	2,269
Starland School Div. No. 30	63,921	548	1,616,024	2,949
Three Hills School Div. No. 60	66,380	1,498	3,886,194	2,594
County of Mountain View No. 17	49,186	4,170	9,535,792	2,287
County of Wheatland No. 16	80,407	2,236	5,361,264	2,398
Banff SD No. 102	249,750	384	1,329,016	3,461
Exshaw SD No. 1699	415,374	159	597,500	3,758
Zone Total/Weighted Average	65,279	24,978	60,236,811	2,412
Mean Average	129,587			2,774
Zone 6				
Cardston School Div. No. 2	41,799	2,805	6,253,712	2,229
Crowsnest Pass School Div. No. 63	44,021	1,401	3,289,545	2,348
Cypress School Div. No. 4	207,739	758	2,577,779	3,401
Pincher Creek School Div. No. 29	66,167	1,208	3,146,839	2,605
Taber School Div. No. 6	40,902	2,249	6,030,845	2,682
Willow Creek School Div. No. 28	41,097	2,933	7,499,351	2,557
County of Forty Mile No. 8	55,496	1,039	2,725,394	2,623
County of Lethbridge No. 26	38,879	2,767	6,631,148	2,397
County of Newell No. 4	82,866	1,513	4,036,680	2,668
County of Vulcan No. 2	59,710	1,241	3,084,284	2,485
County of Warner No. 5	39,467	1,726	4,197,855	2,432
Brooks SD No. 2092	43,669	2,227	5,065,977	2,275
Redcliff SD No. 2283	42,920	670	1,830,544	2,732
Stirling SD No. 647	31,001	272	596,910	2,195
Barons Consolidated SD No. 8	57,710	78	165,466	2,121
Zone Total/Weighted Average	56,852	22,887	57,132,329	2,496
Mean Average	59,563			2,517
Public Rural Total/Weighted Aver.	55,587	167,241	407,132,446	2,434
Mean Average	70,060			2,530

APPENDIX B-7
1983 ASSESSMENTS AND INSTRUCTION EXPENDITURES
A COMPARISON OF PUBLIC RURAL AND SEPARATE RURAL JURISDICTIONS
SEPARATE RURAL JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrolled Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student
Zone 1				
Beaverlodge RCSSD No. 68	61,490	80	241,972	3,025
Fairview RCSSD No. 35	38,040	375	938,046	2,501
Fort Vermilion RCSSD No. 26	28,698	109	338,171	3,102
Grimshaw RCSSD No. 88	34,415	235	460,790	1,961
High Prairie RCSSD No. 56	64,423	469	1,199,531	2,558
Manning RCSSD No. 37	54,796	169	378,557	2,240
McLennan RCSSD No. 30	36,808	150	427,761	2,852
Nampa RCSSD No. 96	58,007	50	105,368	2,107
Peace River RCSSD No. 43	40,684	636	1,493,201	2,348
Sexsmith RCSSD No. 51	61,479	107	245,399	2,293
Spirit River RCSSD No. 36	37,559	88	213,835	2,430
Valleyview RCSSD No. 84	57,249	208	671,077	3,226
Zone Total/Weighted Average	43,122	2,676	6,713,708	2,509
Mean Average	47,804			2,554
Zone 2				
Lakeland RCSSD No. 150	41,070	1,167	3,875,350	3,321 *
Westlock RCSSD No. 110	53,851	411	882,681	2,148
Whitecourt RCSSD No. 94	51,713	581	1,176,756	2,025
Glen Avon Prot. SSD No. 5	52,373	483	1,240,544	2,568
Zone Total/Weighted Average	44,878	1,475	3,299,981	2,237
Mean Average	49,752			2,247
Zone 3				
Drayton Valley RCSSD No. 111	40,525	341	671,029	1,968
Edson RCSSD No. 153	48,447	323	576,057	1,783
Fort Saskatchewan RCSSD No. 104	82,464	758	2,004,850	2,645
Hinton RCSSD No. 155	43,588	213	352,002	1,653
Leduc RCSSD No. 132	42,068	574	1,178,212	2,053
Sherwood Park RCSSD No. 105	47,331	2,600	5,922,766	2,278
Spruce Grove RCSSD No. 128	44,211	443	923,508	2,085
Stony Plain RCSSD No. 151	60,848	225	337,943	1,502
Vegreville RCSSD No. 16	53,437	343	814,199	2,374
Vermilion RCSSD No. 97	52,780	282	801,509	2,842
Wainwright RCSSD No. 31	41,842	258	607,124	2,353
Wetaskiwin RCSSD No. 15	39,054	347	703,034	2,026
Zone Total/Weighted Average	50,225	6,707	14,892,233	2,220
Mean Average	49,716			2,130

APPENDIX B-7 1983 continued

SEPARATE RURAL JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrolled Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student
Zone 4				
Camrose RCSSD No. 60	52,787	476	1,309,607	2,751
Killam RCSSD No. 49	60,717	30	125,832	4,194
Ponoka RCSSD No. 95	62,208	172	430,509	2,503
Provost RCSSD No. 65	48,719	208	507,006	2,438
Rocky Mtn. House RCSSD No. 131	54,435	213	415,929	1,953
Theresetta RCSSD No. 23	75,288	101	282,400	2,796
Zone Total/Weighted Average	52,403	1,200	3,071,283	2,559
Mean Average	59,025			2,772
Zone 5				
Assumption RCSSD No. 50	69,532	52	159,594	3,069
Drumheller RCSSD No. 25	43,577	290	624,999	2,155
Zone Total/Weighted Average	47,324	342	784,593	2,294
Mean Average	56,554			2,612
Zone 6				
Bow Island RCSSD No. 82	61,349	156	387,385	2,483
Coaldale RCSSD No. 73	40,627	275	591,234	2,150
Picture Butte RCSSD No. 79	40,259	163	364,216	2,234
Pincher Creek RCSSD No. 18	55,386	445	976,765	2,195
Taber RCSSD No. 54	44,266	533	1,215,523	2,281
Zone Total/Weighted Average	45,292	1,572	3,535,123	2,249
Mean Average	48,377			
Separate Rural Total/Weighted Aver.	48,275	13,972	32,296,921	2,312
Mean Average	50,693			2,404
Provincial Total/Weighted Average	59,049	422,381	1,077,321,403	2,551

APPENDIX B-8

1983 ASSESSMENTS AND INSTRUCTION EXPENDITURES
A COMPARISON OF PUBLIC AND SEPARATE JURISDICTIONS
A PUBLIC AND SEPARATE SYNOPSIS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrol. Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student
Public Urban Total/Weighted Average	66,229	173,796	475,496,683	2,736
Public Rural Boards				
Zone 1	56,243	19,884	50,387,769	2,534
Zone 2	48,682	19,588	45,589,808	2,327
Zone 3	51,496	55,563	135,153,268	2,432
Zone 4	57,911	24,341	58,632,461	2,409
Zone 5	65,279	24,978	60,236,811	2,412
Zone 6	56,852	22,887	57,132,329	2,496
Public Rural Total/Weighted Average	55,587	167,241	407,132,446	2,434
Public Total/Weighted Average	**60,846**	**341,037**	**882,629,129**	**2,588**
percentage of total		81.3	82.2	
percentage of variance from separate	12.7			6.4
Separate Urban Total/Weighted Average	55,402	64,391	158,378,994	2,460
Separate Rural Boards				
Zone 1	43,122	2,676	6,713,708	2,509
Zone 2	44,878	1,475	3,299,981	2,237
Zone 3	50,225	6,707	14,892,233	2,220
Zone 4	52,403	1,200	3,071,283	2,559
Zone 5	47,324	342	784,593	2,294
Zone 6	45,292	1,572	3,535,123	2,249
Separate Rural Total/Weighted Average	48,275	13,972	32,296,921	2,312
Separate Total/Weighted Average	**53,983**	**78,363**	**190,675,915**	**2,433**
percentage of total		18.7	17.8	
percentage of variance from public	-11.3			-6.0

APPENDIX B-9

1983 ASSESSMENTS AND INSTRUCTION EXPENDITURES
A COMPARISON OF PUBLIC AND SEPARATE JURISDICTIONS
PUBLIC JURISDICTIONS AND THEIR RELATED SEPARATE JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrolled Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student	Percentage Var. Pub. From Sep.
School Divisions					
Acadia School Division No. 8	**100,695**	**648**	**1,891,015**	**2,918**	
Assumption RCSSD No. 50	69,532	52	159,594	3,069	-4.9
Drumheller Valley S Div. No. 62	**51,535**	**1,224**	**2,925,341**	**2,390**	
Drumheller RCSSD No. 25	43,577	290	624,999	2,155	10.9
East Smoky School Div. No. 54	**112,154**	**1,865**	**4,665,755**	**2,502**	
Valleyview RCSSD No. 84	57,249	208	671,077	3,226	-22.4
Fairview School Div. No. 50	**44,955**	**1,468**	**3,466,828**	**2,362**	
Fairview RCSSD No. 35	38,040	375	938,046	2,501	-5.6
Fort Vermilion School Div. No. 52	**46,612**	**2,747**	**5,931,462**	**2,159**	
Fort Vermilion RCSSD No. 26	28,698	109	338,171	3,102	-30.4
High Prairie School Div. No. 48	**40,110**	**3,471**	**8,951,694**	**2,579**	
High Prairie RCSSD No. 56	64,423	469	1,199,531	2,558	0.8
McLennan RCSSD No. 30	36,808	150	427,761	2,852	-9.6
separate aggregate	*52,443*	*619*	*1,627,292*	*2,629*	*-1.9*
Lakeland SD No. 5460	**43,501**	**2,947**	**6,563,269**	**2,227**	
Lakeland RCSSD No. 150	41,070	1,167	3,875,350	3,321	-32.9
Peace River School Div. No. 10	**46,911**	**2,708**	**6,561,115**	**2,423**	
Grimshaw RCSSD No.	34,415	235	460,790	1,961	23.6
Manning RCSSD No. 37	54,796	169	378,557	2,240	8.2
Nampa RCSSD No. 96	58,007	50	105,368	2,107	15.0
Peace River RCSSD No. 43	40,684	636	1,493,201	2,348	3.2
separate aggregate	*42,493*	*1,090*	*2,437,916*	*2,237*	*8.3*
Pincher Creek School Div. No. 29	**66,167**	**1,208**	**3,146,839**	**2,605**	
Pincher Creek RCSSD No. 18	55,386	445	976,765	2,195	18.7
Provost School Div. No. 33	**70,240**	**750**	**2,073,409**	**2,765**	
Provost RCSSD No. 65	48,719	208	507,006	2,438	13.4
Rocky Mtn. House S Div. No. 15	**82,724**	**2,983**	**6,481,937**	**2,173**	
Rocky Mtn. House RCSSD No. 131	54,435	213	415,929	1,953	11.3
Spirit River School Div. No. 47	**47,390**	**1,370**	**3,341,589**	**2,439**	
Spirit River RCSSD No. 36	37,559	88	213,835	2,430	0.4
Taber School Div. No. 6	**40,902**	**2,249**	**6,030,845**	**2,682**	
Taber RCSSD No. 54	44,266	533	1,215,523	2,281	17.6

APPENDIX B-9 1983 continued

PUBLIC JURISDICTIONS AND THEIR RELATED SEPARATE JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrolled Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student	Percentage Var. Pub. From Sep.
Wainwright School Div. No. 32	**52,486**	**1,560**	**3,810,822**	**2,443**	
Wainwright RCSSD No. 31	41,842	258	607,124	2,353	3.8
Westlock School Div. No. 37	**41,247**	**2,240**	**4,996,022**	**2,230**	
Westlock RCSSD No. 110	53,851	411	882,681	2,148	3.8
Yellowhead School Division No. 12	**63,310**	**4,970**	**12,626,817**	**2,541**	
Edson RCSSD No. 153	48,447	323	576,057	1,783	42.5
Hinton RCSSD No. 155	43,588	213	352,002	1,653	53.7
separate aggregate	*45,973*	*536*	*928,059*	*1,731*	*46.8*
aggregate for divs. with sep. dists.	***56,699***	***34,408***	***83,464,759***	***2,426***	
aggregate for sep. dists. in divisions	*44,800*	*6,602*	*16,419,367*	***2,487***	*-2.5*
percentage public of total		83.9	83.6		
percentage var. public from sep.	*26.6*			*-2.5*	
Counties					
County of Flagstaff No. 29	**50,469**	**1,834**	**4,284,270**	**2,336**	
Killam RCSSD No. 49	60,717	30	125,832	4,194	-44.3
County of Forty Mile No. 8	**55,496**	**1,039**	**2,725,394**	**2,623**	
Bow Island RCSSD No. 82	61,349	156	387,385	2,483	5.6
County of Grande Prairie No. 1	**46,754**	**3,254**	**6,919,649**	**2,127**	
Beaverlodge RCSSD No. 68	61,490	80	241,972	3,025	-29.7
Sexsmith RCSSD No. 51	61,479	107	245,399	2,293	-7.2
separate aggregate	*61,484*	*187*	*487,371*	*2,606*	-18.4
County of Lac St. Anne No. 28	**51,315**	**2,597**	**5,121,257**	**1,972**	
Whitecourt RCSSD No. 94	51,713	581	1,176,756	2,025	-2.6
County of Leduc No. 25	**46,793**	**6,315**	**15,092,623**	**2,390**	
Leduc RCSSD No. 132	42,068	574	1,178,212	2,053	16.4
County of Lethbridge No. 26	**38,879**	**2,767**	**6,631,148**	**2,397**	
Coaldale RCSSD No. 73	40,627	275	591,234	2,150	11.5
Picture Butte RCSSD No. 79	40,259	163	364,216	2,234	7.3
separate aggregate	*40,490*	*438*	*955,450*	*2,181*	9.9
County of Minburn No. 27	**51,965**	**1,722**	**4,905,826**	**2,849**	
Vegreville RCSSD No. 16	53,437	343	814,199	2,374	20.0
County of Paintearth No. 18	**128,855**	**915**	**2,367,750**	**2,588**	
Theresetta RCSSD No. 23	75,288	101	282,400	2,796	-7.4
County of Parkland No. 31	**53,572**	**10,134**	**22,061,063**	**2,177**	
Drayton Valley RCSSD No. 111	40,525	341	671,029	1,968	10.6
Spruce Grove RCSSD No. 128	44,211	443	923,508	2,085	4.4
Stony Plain RCSSD No. 151	60,848	225	337,943	1,502	44.9
separate aggregate	*45,909*	*1,009*	*1,932,480*	*1,915*	*13.7*

APPENDIX B-9 1983 continued

PUBLIC JURISDICTIONS AND THEIR RELATED SEPARATE JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrolled Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student	Percentage Var. Pub. From Sep.
County of Ponoka No. 3	**46,258**	**2,926**	**7,320,978**	**2,502**	
Ponoka RCSSD No. 95	62,208	172	430,509	2,503	0.0
County of Strathcona No. 20	**50,017**	**11,832**	**31,005,137**	**2,620**	
Fort Saskatchewan RCSSD No. 104	82,464	758	2,004,850	2,645	-0.9
Sherwood Park RCSSD No. 105	47,331	2,600	5,922,766	2,278	15.0
separate aggregate	*54,419*	*3,358*	*7,927,616*	*2,361*	*11.0*
County of Vermilion River No. 24	**44,777**	**2,179**	**5,198,612**	**2,386**	
Vermilion RCSSD No. 97	52,780	282	801,509	2,842	-16.0
Aggregate for Ctys. with Sep. Dists.	***50,696***	***47,514***	***113,633,707***	***2,392***	
aggregate for sep. dists. in counties	*51,669*	*7,231*	*16,499,719*	*2,282*	*4.8*
percentage public of total		*86.8*	*87.3*		
percentage var. public from sep.	*-1.9*			*4.8*	
School Districts					
Calgary SD No. 19	**66,444**	**78,590**	**215,387,702**	**2,741**	
Calgary RCSSD No. 1	54,331	23,446	55,526,002	2,368	15.8
Camrose SD No. 1315	**46,523**	**1,886**	**4,692,783**	**2,488**	
Camrose RCSSD No. 60	52,787	476	1,309,607	2,751	-9.6
Edmonton SD No. 7	**72,937**	**63,582**	**178,563,819**	**2,808**	
Edmonton RCSSD No. 7	58,914	25,395	66,714,340	2,627	6.9
Fort McMurray SD No. 2833	**87,367**	**4,795**	**14,392,752**	**3,002**	
Fort McMurray RCSSD No. 32	75,227	3,325	7,648,817	2,300	30.5
Grande Prairie SD No. 2357	**54,837**	**3,555**	**9,296,903**	**2,615**	
Grande Prairie RCSSD No. 28	46,862	1,407	3,034,022	2,156	21.3
Lethbridge SD No. 51	**46,617**	**7,561**	**19,776,138**	**2,616**	
Lethbridge RCSSD No. 9	49,841	2,153	5,061,836	2,351	11.3
Medicine Hat SD No. 76	**47,289**	**5,715**	**14,388,114**	**2,518**	
Medicine Hat RCSSD No. 21	47,062	1,940	4,383,521	2,260	11.4
Red Deer SD No. 104	**45,945**	**6,955**	**16,661,445**	**2,396**	
Red Deer RCSSD No. 17	44,379	1,715	3,952,540	2,305	3.9
St. Albert SD No. 3	**39,282**	**3,043**	**7,029,810**	**2,310**	
St. Albert Prot. SSD No. 6	39,509	5,010	12,057,916	2,407	-4.0
St. Paul SD No. 2228	**49,279**	**826**	**2,370,660**	**2,870**	
Glen Avon Prot. SSD No. 5	52,373	483	1,240,544	2,568	11.8
Wetaskiwin SD No. 264	**45,046**	**1,981**	**5,044,289**	**2,546**	
Wetaskiwin RCSSD No. 15	39,054	347	703,034	2,026	25.7

APPENDIX B-9 1983 continued

PUBLIC JURISDICTIONS AND THEIR RELATED SEPARATE JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrolled Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student	Percentage Var. Pub. From Sep.
agg. for pub. dists. with sep. dists.	***65,792***	***178,489***	***487,604,415***	***2,732***	
agg. for sep. dists. in pub. dists.	*55,288*	*66,040*	*162,762,295*	*2,465*	*10.8*
percentage public of total		73.0	75.0		
percentage var. public from sep.	*19.0*			*10.8*	
Summary					
aggregate for public with separate	***61,682***	***260,411***	***684,702,881***	***2,629***	
aggregate for separate districts	*54,005*	*79,873*	*195,681,381*	*2,450*	*7.3*
percentage public of total		76.5	77.8		
percentage var. public from sep.	*14.2*			*7.3*	

APPENDIX C-1

1993 ASSESSMENTS, REQUISITIONS, AND EQUITY
A COMPARISON OF PUBLIC URBAN AND SEPARATE URBAN JURISDICTIONS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1993 Supp. Requisition	Supp. Req. Per Res. Student	Total Equity Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Public Urban Boards									
Calgary SD No. 19	93,403	19,085,595,160	204,336	11.54	220,264,944	2,358	0	19,085,595,160	204,336
Edmonton SD No. 7	73,388	14,248,107,440	194,148	11.63	165,678,000	2,258	2,400,583	14,454,554,672	196,961
Fort McMurray SD No. 2833	4,252	1,165,692,530	274,152	13.72	15,994,465	3,762	0	1,165,692,530	274,152
Grande Prairie SD No. 2357	4,256	560,958,740	131,804	13.98	7,842,730	1,843	1,863,130	694,220,889	163,116
Lethbridge SD No. 51	8,051	1,354,544,780	168,246	12.51	16,952,000	2,106	1,236,668	1,453,360,388	180,519
Medicine Hat SD No. 76	6,120	953,120,612	155,739	12.12	11,548,128	1,887	1,107,108	1,044,495,375	170,669
Red Deer SD No. 104	8,760	1,254,304,330	143,185	12.59	15,789,957	1,803	2,681,790	1,467,337,260	167,504
St. Albert SD No. 3	4,153	496,426,020	119,534	14.41	7,154,605	1,723	1,991,233	634,588,766	152,802
Public Total/Weighted Average	202,383	39,118,749,612	193,291	11.79	461,224,829	2,279	11,280,512	40,075,505,399	198,018
Mean Average			173,893	12.81		2,217			188,757
Separate Urban Boards									
Calgary RCSSD No. 1	31,255	5,979,085,250	191,300	11.60	69,372,647	2,220	0	5,979,085,250	191,300
Edmonton RCSSD No. 7	29,941	5,513,877,390	184,158	11.66	64,278,000	2,147	3,263,297	5,793,808,619	193,508
Fort McMurray RCSSD No. 32	3,382	944,114,504	279,159	12.15	11,471,871	3,392	0	944,114,504	279,159
Grande Prairie RCSSD No. 28	2,175	260,963,987	119,983	13.31	3,473,883	1,597	1,102,800	343,808,195	158,073
Lethbridge RCSSD No. 9	2,714	450,433,180	165,967	13.30	5,990,512	2,207	252,316	469,405,097	172,957
Medicine Hat RCSSD No. 21	2,083	304,474,867	146,171	12.08	3,677,716	1,766	591,435	353,439,250	169,678
Red Deer RCSSD No. 17	2,639	338,968,310	128,446	12.60	4,270,245	1,618	867,300	407,813,825	154,533
St. Albert Prot. SSD No. 6	6,129	713,429,420	116,402	14.06	10,032,840	1,637	3,015,508	927,860,441	151,389
SeparateTotal/Weighted Average	80,318	14,505,346,908	180,599	11.90	172,567,714	2,149	9,092,656	15,269,638,945	190,115
Mean Average			166,448	12.60		2,073			183,824
Provincial Total/Weighted Average	486,637	92,850,073,634	190,799	11.75	1,091,138,560	2,242	69,128,462	98,732,537,165	202,887

APPENDIX C-2
1993 ASSESSMENTS, REQUISITIONS, AND EQUITY
A COMPARISON OF PUBLIC RURAL AND SEPARATE RURAL JURISDICTIONS
PUBLIC RURAL JURISDICTIONS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1993 Supp. Requisition	Supp. Req. Per Res. Student	Total Equity Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Zone 1									
East Smoky School Div. No. 54	1,791	1,018,190,243	568,504	5.93	6,036,921	3,371	0	1,018,190,243	568,504
Fairview School Div. No. 50	1,529	251,669,891	164,598	10.49	2,640,341	1,727	899,629	337,420,001	220,680
Fort Vermilion School Div. No. 52	2,710	447,298,236	165,055	11.40	5,100,000	1,882	2,510,833	667,512,191	246,314
High Prairie School Div. No. 48	3,094	551,129,311	178,128	12.01	6,620,155	2,140	665,054	606,495,198	196,023
Northland School Div. No. 61	1,913	859,584,818	449,339	11.75	10,101,527	5,280	0	859,584,818	449,339
Peace River School Div. No. 10	2,824	657,645,913	232,877	12.83	8,436,993	2,988	0	657,645,913	232,877
Spirit River School Div. No. 47	1,239	442,767,660	357,359	10.25	4,538,402	3,663	0	442,767,660	357,359
County of Grande Prairie No. 1	3,806	538,900,690	141,592	12.01	6,470,192	1,700	1,555,367	668,446,822	175,630
Grovedale SD No. 4910	242	145,455,265	601,055	5.74	835,000	3,450	0	145,455,265	601,055
St Isidore SD No. 5054	66	7,613,554	115,357	14.30	108,875	1,650	50,007	11,110,509	168,341
Falher Consolidated SD No. 69	240	36,243,729	151,016	16.80	608,975	2,537	0	36,243,729	151,016
Zone Total/Weighted Average	19,454	4,956,499,310	254,780	10.39	51,497,381	2,647	5,680,890	5,503,271,336	282,886
Mean Average			284,080	11.23		2,763			306,103
Zone 2									
Lac La Biche School Div. 51	2,226	200,480,074	90,063	14.65	2,936,782	1,319	1,852,918	326,969,932	146,887
Westlock School Div. No. 37	2,151	240,407,049	111,765	14.15	3,402,490	1,582	1,261,093	329,511,101	153,190
County of Athabasca No. 12	2,237	293,716,528	131,299	14.18	4,164,186	1,862	1,084,597	370,217,449	165,497
County of Barrhead No. 11	2,464	239,515,124	97,206	14.79	3,542,891	1,438	1,827,387	363,054,579	147,344
County of Lac St. Anne No. 28	2,649	423,584,760	159,904	14.68	6,217,819	2,347	580,430	463,126,165	174,831
County of St. Paul No. 19	1,690	208,422,078	123,327	11.84	2,468,000	1,460	880,572	282,786,197	167,329
County of Smoky Lake No. 13	733	154,005,700	210,103	12.66	1,950,000	2,660	0	154,005,700	210,103
County of Thorhild No. 7	652	96,996,454	148,768	14.56	1,412,000	2,166	325,448	119,352,900	183,057
Lakeland SD No. 5460	3,727	559,958,452	150,244	11.83	6,622,097	1,777	1,228,785	663,863,385	178,123
St. Paul SD No. 2228	566	78,385,010	138,489	12.30	963,825	1,703	243,044	98,151,053	173,412
Swan Hills SD No. 5109	570	488,766,336	857,485	4.08	1,994,687	3,499	0	488,766,336	857,485
Whitecourt SD No. 2736	1,285	319,032,781	248,275	11.55	3,684,930	2,868	0	319,032,781	248,275
Zone Total/Weighted Average	20,950	3,303,270,346	157,674	11.92	39,359,707	1,879	9,284,274	4,082,454,678	194,867
Mean Average			205,577	12.61		2,057			233,794

APPENDIX C-2 1993 continued: *PUBLIC RURAL JURISDICTIONS*

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1993 Supp. Requisition	Supp. Req. Per Res. Student	Total Equity Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Zone 3									
Sturgeon School Div. No. 24	5,129	751,785,170	146,575	13.17	9,903,490	1,931	1,170,222	840,618,051	163,895
Twin Rivers School Div. No. 65	2,355	804,952,614	341,806	11.02	8,870,195	3,767	0	804,952,614	341,806
Wainwright School Div. No. 32	1,520	354,639,383	233,315	11.62	4,120,000	2,711	0	354,639,383	233,315
Yellowhead School Div. No. 12	5,027	1,528,246,833	304,008	9.59	14,653,932	2,915	0	1,528,246,833	304,008
County of Beaver No. 9	1,769	278,779,591	157,592	14.34	3,998,043	2,260	607,365	321,130,553	181,532
County of Lamont No. 30	1,615	243,693,868	150,894	16.08	3,919,230	2,427	685,692	286,329,522	177,294
County of Leduc No. 25	4,861	927,388,584	190,781	12.83	11,900,000	2,448	192,854	942,418,046	193,873
County of Minburn No. 27	1,377	287,743,041	208,964	14.24	4,097,100	2,975	0	287,743,041	208,964
County of Parkland No. 31	9,453	1,581,492,065	167,301	14.54	22,995,000	2,433	1,162,563	1,661,447,888	175,759
County of Strathcona No. 20	12,577	2,764,778,504	219,828	12.38	34,223,721	2,721	0	2,764,778,504	219,828
County of Two Hills No. 21	684	165,439,663	241,871	13.37	2,212,457	3,235	0	165,439,663	241,871
County of Vermilion River No. 24	2,509	359,703,270	143,365	15.08	5,424,800	2,162	1,005,602	426,381,918	169,941
County of Wetaskiwin No. 10	2,737	455,857,918	166,554	12.66	5,771,608	2,109	411,537	488,362,274	178,430
Devon SD No. 4972	954	104,660,349	109,707	17.46	1,827,847	1,916	515,030	134,150,355	140,619
Grande Cache SD No. 5258	918	151,736,614	165,290	14.87	2,256,082	2,458	186,789	164,299,424	178,975
Jasper SD No. 3063	516	208,932,630	404,908	7.66	1,600,000	3,101	0	208,932,630	404,908
Leduc SC No. 297	2,392	254,273,100	106,301	13.81	3,511,607	1,468	1,401,487	355,753,831	148,727
Legal SD No. 1738	390	33,605,192	86,167	14.25	478,741	1,228	285,837	53,669,501	137,614
Wetaskiwin SD No. 264	1,785	233,619,580	130,879	12.30	2,874,207	1,610	705,062	290,928,009	162,985
Thibault RC Public SD No. 35	1,663	120,516,832	72,470	14.69	1,770,752	1,065	1,261,820	206,395,910	124,111
Zone Total/Weighted Average	60,231	11,611,844,801	192,789	12.61	146,408,812	2,431	9,591,860	12,372,585,826	205,419
Mean Average			187,429	13.30		2,347			204,423
Zone 4									
Neutral Hills School Div. No. 16	529	262,309,402	495,859	9.53	2,500,000	4,726	0	262,309,402	495,859
Provost School Div. No. 33	787	292,873,265	372,139	10.02	2,934,322	3,728	0	292,873,265	372,139
Rocky Mtn. House S Div. No. 15	3,184	914,149,942	287,107	7.84	7,164,664	2,250	0	914,149,942	287,107
County of Camrose No. 22	2,138	311,628,533	145,757	15.38	4,793,589	2,242	929,817	372,075,415	174,030
County of Flagstaff No. 29	1,890	380,658,738	201,407	13.00	4,947,774	2,618	112,936	389,347,509	206,004
County of Lacombe No. 14	4,879	1,125,917,418	230,768	9.11	10,260,492	2,103	0	1,125,917,418	230,768
County of Paintearth No. 18	856	398,685,830	465,754	8.09	3,225,000	3,768	0	398,685,830	465,754
County of Ponoka No. 3	3,114	472,694,116	151,796	6.67	3,153,322	1,013	898,479	607,379,295	195,048
County of Red Deer No. 23	5,721	893,073,901	156,105	9.18	8,200,000	1,433	1,200,830	1,023,858,039	178,965
County of Stettler No. 6	1,224	328,174,250	268,116	10.36	3,400,000	2,778	0	328,174,250	268,116
Camrose SD No. 1315	1,807	262,808,610	145,439	13.12	3,448,500	1,908	536,747	303,713,854	168,076
Stettler SD No. 1475	948	132,557,147	139,828	16.25	2,154,685	2,273	296,086	150,772,485	159,043
Zone Total/Weighted Average	27,077	5,775,531,152	213,300	9.73	56,182,348	2,075	3,974,895	6,184,149,352	228,391
Mean Average			255,006	10.71		2,570			266,742

APPENDIX C-2 1993 continued

PUBLIC RURAL JURISDICTIONS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1993 Supp. Requisition	Supp. Req. Per Res. Student	Total Equity Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Zone 5									
Acadia School Division No. 8	612	378,831,976	619,006	6.30	2,386,471	3,899	0	378,831,976	619,006
Berry Creek School Div. No. 1	186	590,883,946	3,176,795	4.22	2,493,274	13,405	0	590,883,946	3,176,795
Drumheller Valley S Div. No. 62	949	129,991,919	136,978	15.84	2,058,818	2,169	362,131	152,856,545	161,071
Foothills School Div. No. 38	6,060	942,196,332	155,478	14.24	13,420,000	2,215	1,153,309	1,023,168,278	168,840
Mount Rundle School Div. No. 64	1,255	325,933,683	259,708	10.81	3,524,788	2,809	0	325,933,683	259,708
Rangeland School Div. No. 9	813	292,591,869	359,892	9.14	2,675,000	3,290	0	292,591,869	359,892
Rocky View School Div. No. 41	10,335	1,780,894,108	172,317	13.93	24,800,000	2,400	133,485	1,790,479,699	173,244
Starland School Div. No. 30	540	164,495,937	304,622	11.45	1,883,790	3,489	0	164,495,937	304,622
Three Hills School Div. No. 60	2,142	426,151,806	198,950	9.54	4,064,777	1,898	142,941	441,137,761	205,947
County of Mountain View No. 17	4,871	795,520,567	163,318	11.27	8,963,314	1,840	1,011,240	885,271,101	181,743
County of Wheatland No. 16	2,695	582,271,080	216,056	11.07	6,445,737	2,392	0	582,271,080	216,056
Banff SD No. 102	485	620,213,150	1,278,790	3.30	2,043,636	4,214	0	620,213,150	1,278,790
Exshaw SD No. 1699	73	119,110,519	1,631,651	3.13	372,625	5,104	0	119,110,519	1,631,651
Zone Total/Weighted Average	31,016	7,149,086,892	230,497	10.51	75,132,230	2,422	2,803,106	7,415,811,949	239,096
Mean Average			667,197	9.56		3,779			672,105
Zone 6									
Cardston School Div. No. 2	2,540	206,885,213	81,451	12.08	2,500,000	984	2,022,716	374,273,225	147,352
Crowsnest Pass School Div. No. 63	1,226	142,851,299	116,518	11.56	1,651,707	1,347	628,876	197,240,942	160,882
Cypress School Div. No. 4	1,250	1,338,452,241	1,070,762	4.77	6,386,000	5,109	0	1,338,452,241	1,070,762
Pincher Creek School Div. No. 29	1,035	213,614,937	206,391	11.82	2,525,527	2,440	8,542	214,337,439	207,089
Taber School Div. No. 6	2,731	425,857,454	155,935	10.86	4,623,739	1,693	673,937	487,928,668	178,663
Willow Creek School Div. No. 28	2,710	389,859,029	143,859	14.72	5,738,262	2,117	907,692	451,527,862	166,615
County of Forty Mile No. 8	1,051	203,334,088	193,467	11.12	2,261,366	2,152	517,824	249,895,003	237,769
County of Lethbridge No. 26	3,435	356,606,307	103,816	13.00	4,635,221	1,349	1,955,882	507,080,223	147,622
County of Newell No. 4	1,470	507,167,392	345,012	9.39	4,762,329	3,240	0	507,167,392	345,012
County of Vulcan No. 2	1,181	258,822,658	219,156	12.29	3,181,418	2,694	146,814	270,766,637	229,269
County of Warner No. 5	1,990	182,287,995	91,602	17.42	3,175,820	1,596	1,455,737	265,845,432	133,591
Brooks SD No. 2092	2,004	261,706,694	130,592	13.35	3,495,000	1,744	721,362	315,722,506	157,546
Redcliff SD No. 2283	864	84,792,326	98,139	11.71	992,863	1,149	512,758	128,582,802	148,823
Stirling SD No. 647	300	14,646,533	48,822	13.17	192,928	643	295,860	37,107,364	123,691
Barons Consolidated SD No. 8	91	14,898,089	163,715	18.45	274,929	3,021	26,134	16,314,261	179,278
Zone Total/Weighted Average	23,878	4,601,782,255	192,721	10.08	46,397,109	1,943	9,874,134	5,581,123,761	233,735
Mean Average			211,282	12.38		2,085			242,264

APPENDIX C-2 1993 continued
PUBLIC RURAL JURISDICTIONS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1993 Supp. Requisition	Supp. Req. Per Res. Student	Total Equity Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Public Rural Total/Weighted Aver.	182,606	37,398,014,756	204,802	11.10	414,977,587	2,273	41,209,159	41,111,807,463	225,139
Mean Average			292,087	11.80		2,569			311,245
Provincial Total/Weighted Average	486,637	92,850,073,634	190,799	11.75	1,091,138,560	2,242	69,128,462	98,732,537,165	202,887

APPENDIX C-3

1993 ASSESSMENTS, REQUISITIONS, AND EQUITY
A COMPARISON OF PUBLIC RURAL AND SEPARATE RURAL JURISDICTIONS
SEPARATE RURAL JURISDICTIONS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1993 Supp. Requisition	Supp. Req. Per Res. Student	Total Equity Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Zone 1									
Fairview RCSSD No. 35	264	38,751,262	146,785	13.11	507,963	1,924	87,114	45,396,977	171,958
High Prairie RCSSD No. 56	320	30,542,199	95,444	11.37	347,172	1,085	211,611	49,158,520	153,620
McLennan RCSSD No. 30	101	10,762,074	106,555	14.68	157,963	1,564	74,736	15,853,864	156,969
North Peace RCSSD No. 43	1,019	227,167,265	222,932	14.35	3,260,000	3,199	0	227,167,265	222,932
Slave Lake RCSSD No. 490	490	63,036,053	128,645	11.79	743,093	1,517	226,211	82,225,372	167,807
Spirit River RCSSD No. 36	100	11,290,793	112,908	8.76	98,881	989	96,722	22,335,059	223,351
Valleyview RCSSD No. 84	150	11,940,822	79,605	8.45	100,902	673	134,867	27,901,089	186,007
Zone Total/Weighted Average	2,444	393,490,468	161,003	13.26	5,215,974	2,134	831,261	456,200,382	186,661
Mean Average			127,554	11.79		1,564			183,235
Zone 2									
Lakeland RCSSD No. 150	1,923	251,497,009	130,784	12.51	3,145,502	1,636	1,135,429	342,279,656	177,993
Westlock RCSSD No. 110	358	56,367,680	157,452	10.94	616,858	1,723	169,555	71,861,395	200,730
Whitecourt RCSSD No. 94	691	158,316,704	229,112	10.96	1,734,735	2,510	0	158,316,704	229,112
Glen Avon Prot. SSD No. 5	361	53,739,012	148,862	11.40	612,674	1,697	127,600	64,931,094	179,865
Zone Total/Weighted Average	3,333	519,920,405	155,992	11.75	6,109,769	1,833	1,432,584	641,828,394	192,568
Mean Average			166,552	11.45		1,892			196,925

APPENDIX C-3 1993 continued
SEPARATE RURAL JURISDICTIONS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1993 Supp. Requisition	Supp. Req. Per Res. Student	Total Equity Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Zone 3									
Drayton Valley RCSSD No. 111	487	100,911,876	207,211	10.90	1,100,000	2,259	120,921	112,004,935	229,990
Edson RCSSD No. 153	272	34,877,759	128,227	10.88	379,360	1,395	162,763	49,841,932	183,242
Fort Saskatchewan RCSSD No. 104	723	182,390,280	252,269	13.66	2,491,345	3,446	0	182,390,280	252,269
Hinton RCSSD No. 155	539	113,170,959	209,965	9.87	1,117,000	2,072	0	113,170,959	209,965
Leduc RCSSD No. 132	689	73,397,850	106,528	13.23	970,822	1,409	424,646	105,502,709	153,124
Sherwood Park RCSSD No. 105	3,098	498,750,203	160,991	13.14	6,555,794	2,116	742,114	555,208,583	179,215
Spruce Grove RCSSD No. 128	735	81,310,630	110,627	13.04	1,060,000	1,442	459,422	116,552,038	158,574
Stony Plain RCSSD No. 151	586	72,435,052	123,609	10.56	765,114	1,306	307,966	101,590,881	173,363
Vegreville RCSSD No. 16	387	56,579,106	146,199	14.16	801,170	2,070	16,124	57,717,793	149,142
Vermilion RCSSD No. 97	247	25,433,813	102,971	14.25	362,431	1,467	150,138	35,969,837	145,627
Wainwright RCSSD No. 31	466	42,591,676	91,398	11.02	469,314	1,007	267,540	66,871,746	143,502
Wetaskiwin RCSSD No. 15	329	37,474,750	113,905	12.36	463,230	1,408	181,520	52,159,500	158,540
Zone Total/Weighted Average	8,558	1,319,323,954	154,163	12.53	16,535,580	1,932	2,833,154	1,545,372,749	180,576
Mean Average			146,158	12.26		1,783			178,046
Zone 4									
Camrose RCSSD No. 60	498	57,788,280	116,041	12.50	722,520	1,451	234,186	76,518,843	153,652
Killam RCSSD No. 49	70	6,088,647	86,981	12.48	76,000	1,086	57,619	10,704,723	152,925
Ponoka RCSSD No. 95	177	21,292,431	120,296	7.47	159,000	898	103,681	35,176,837	198,739
Provost RCSSD No. 65	177	31,686,622	179,020	11.68	370,000	2,090	80,665	38,594,734	218,049
Rocky Mtn. House RCSSD No. 131	453	50,102,911	110,602	7.91	396,119	874	290,863	86,892,570	191,816
Theresetta RCSSD No. 23	46	6,184,687	134,450	10.74	66,400	1,443	17,056	7,773,332	168,985
Zone Total/Weighted Average	1,421	173,143,578	121,846	10.34	1,790,039	1,260	784,070	248,983,649	175,217
Mean Average			124,565	10.46		1,307			180,694

APPENDIX C-3 1993 continued

SEPARATE RURAL JURISDICTIONS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1993 Supp. Requisition	Supp. Req. Per Res. Student	Total Equity Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Zone 5									
Airdrie RCSSD No. 365	475	57,992,788	122,090	12.33	715,015	1,505	296,333	82,027,496	172,689
Assumption RCSSD No. 50	37	6,245,551	168,799	8.41	52,500	1,419	14,240	7,939,582	214,583
Cochrane RCSSD No. 438	254	48,175,773	189,668	13.40	645,471	2,541	0	48,175,773	189,668
Drumheller RCSSD No. 25	275	35,129,563	127,744	14.52	510,141	1,855	109,159	42,646,520	155,078
Foothills RCSSD No. 346	633	59,620,886	94,188	12.62	752,327	1,189	415,804	92,572,784	146,245
Zone Total/Weighted Average	1,674	207,164,561	123,754	12.91	2,675,454	1,598	835,536	271,861,412	162,402
Mean Average			140,498	12.25		1,702			175,653
Zone 6									
Bow Island RCSSD No. 82	123	15,391,918	125,138	13.64	210,000	1,707	37,000	18,103,827	147,186
Coaldale RCSSD No. 73	202	37,873,514	187,493	11.23	425,448	2,106	27,858	40,353,442	199,770
Old Mossleigh RCSSD No. 400	46	4,233,462	92,032	12.72	53,850	1,171	27,575	6,401,293	139,159
Picture Butte RCSSD No. 79	179	20,300,027	113,408	11.05	224,265	1,253	131,212	32,177,079	179,760
Pincher Creek RCSSD No. 18	351	80,701,383	229,918	8.48	684,533	1,950	0	80,701,383	229,918
Taber RCSSD No. 54	439	54,555,813	124,273	9.49	517,500	1,179	187,596	74,332,532	169,322
Zone Total/Weighted Average	1,340	213,056,117	158,997	9.93	2,115,596	1,579	411,241	254,471,118	189,904
Mean Average			145,377	11.10		1,561			177,519
Separate Rural Total/Weighted Aver.	18,770	2,826,099,083	150,565	12.19	34,442,412	1,835	7,127,846	3,410,959,372	181,724
Mean Average			140,878	11.65		1,641			180,861
Provincial Total/Weighted Average	486,637	92,850,073,634	190,799	11.75	1,091,138,560	2,242	69,128,462	98,732,537,165	202,887

APPENDIX C-4

1993 ASSESSMENTS, REQUISITIONS, AND EQUITY
A COMPARISON OF PUBLIC AND SEPARATE JURISDICTIONS
PUBLIC AND SEPARATE SYNOPSIS

	Sept. 30 Resident Students	Adjusted Equalized Assessment	Adj. Equalized Assess. Per Res. Student	Net Mill Rate	1993 Supp. Requisition	Supp. Req. Per Res. Student	Total Equity Grants	Adj. Eq. Assess. Modified for Value of E. Grants	Modified Adj. Eq. Assess. Per Res. Student
Public Urban Total/Weighted Aver.	202,383	39,118,749,612	193,291	11.79	461,224,829	2,279	11,280,512	40,075,505,399	198,018
Public Rural Boards									
Zone 1	19,454	4,956,499,310	254,780	10.39	51,497,381	2,647	5,680,890	5,503,271,336	282,886
Zone 2	20,950	3,303,270,346	157,674	11.92	39,359,707	1,879	9,284,274	4,082,454,678	194,867
Zone 3	60,231	11,611,844,801	192,789	12.61	146,408,812	2,431	9,591,860	12,372,585,826	205,419
Zone 4	27,077	5,775,531,152	213,300	9.73	56,182,348	2,075	3,974,895	6,184,149,352	228,391
Zone 5	31,016	7,149,086,892	230,497	10.51	75,132,230	2,422	2,803,106	7,415,811,949	239,096
Zone 6	23,878	4,601,782,255	192,721	10.08	46,397,109	1,943	9,874,134	5,581,123,761	233,735
Public Rural Total/Weighted Aver.	182,606	37,398,014,756	204,802	11.10	414,977,587	2,273	41,209,159	41,111,807,463	225,139
Public Total/Weighted Average	**384,989**	**76,516,764,368**	**198,751**	**11.45**	**876,202,416**	**2,276**	**52,489,671**	**81,100,567,967**	**210,657**
percentage of total	79.5	81.5			80.9		76.4	81.3	
percentage of variance from separate			13.6	-4.1		8.9			11.7
Separate Urban Total/Weighted Aver.	80,318	14,505,346,908	180,599	11.90	172,567,714	2,149	9,092,656	15,269,638,945	190,115
Separate Rural Boards									
Zone 1	2,444	393,490,468	161,003	13.26	5,215,974	2,134	831,261	456,200,382	186,661
Zone 2	3,333	519,920,405	155,992	11.75	6,109,769	1,833	1,432,584	641,828,394	192,568
Zone 3	8,558	1,319,323,954	154,163	12.53	16,535,580	1,932	2,833,154	1,545,372,749	180,576
Zone 4	1,421	173,143,578	121,846	10.34	1,790,039	1,260	784,070	248,983,649	175,217
Zone 5	1,674	207,164,561	123,754	12.91	2,675,454	1,598	835,536	271,861,412	162,402
Zone 6	1,340	213,056,117	158,997	9.93	2,115,596	1,579	411,241	254,471,118	189,904
Separate Rural Total/Weighted Aver.	18,770	2,826,099,083	150,565	12.19	34,442,412	1,835	7,127,846	3,410,959,372	181,724
Separate Total/Weighted Average	**99,088**	**17,331,445,991**	**174,910**	**11.94**	**207,010,126**	**2,089**	**16,220,502**	**18,689,470,160**	**188,615**
percentage of total	20.5	18.5			19.1		23.6	18.7	
percentage of variance from public			-12.0	4.3		-8.2			-10.5
Provincial Total/Weighted Average	486,637	92,850,073,634	190,799	11.75	1,091,138,560	2,242	69,128,462	98,732,537,165	202,887

APPENDIX C-5

1993 ASSESSMENTS AND INSTRUCTION EXPENDITURES
A COMPARISON OF PUBLIC URBAN AND SEPARATE URBAN JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrol. Students	Grade 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student
Public Urban Boards				
Calgary SD No. 19	204,336	91,831	370,326,138	4,033
Edmonton SD No. 7	196,961	72,512	279,433,547	3,854
Fort McMurray SD No. 2833	274,152	4,286	16,955,668	3,956
Grande Prairie SD No. 2357	163,116	4,449	17,780,325	3,996
Lethbridge SD No. 51	180,519	7,704	30,712,723	3,987
Medicine Hat SD No. 76	170,669	6,342	23,818,828	3,756
Red Deer SD No. 104	167,504	8,315	30,779,184	3,702
St. Albert SD No. 3	152,802	4,463	16,360,511	3,666
Public Total/Weighted Average	198,018	199,902	786,166,924	3,933
Mean Average	188,757			3,869
Separate Urban Boards				
Calgary RCSSD No. 1	191,300	32,111	119,643,027	3,726
Edmonton RCSSD No. 7	193,508	29,668	108,335,186	3,652
Fort McMurray RCSSD No. 32	279,159	3,510	14,591,757	4,157
Grande Prairie RCSSD No. 28	158,073	2,014	7,575,444	3,761
Lethbridge RCSSD No. 9	172,957	2,822	10,627,031	3,766
Medicine Hat RCSSD No. 21	169,678	2,147	8,220,374	3,829
Red Deer RCSSD No. 17	154,533	2,968	10,023,688	3,377
St. Albert Prot. SSD No. 6	151,389	5,945	23,132,012	3,891
SeparateTotal/Weighted Average	190,115	81,185	302,148,519	3,722
Mean Average	183,824			3,770
Provincial Total/Weighted Average	202,887	472,025	1,866,379,521	3,954

APPENDIX C-6
1993 ASSESSMENTS AND INSTRUCTION EXPENDITURES
A COMPARISON OF PUBLIC RURAL AND SEPARATE RURAL JURISDICTIONS
PUBLIC RURAL JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrol. Students	Grade 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student
Zone 1				
East Smoky School Div. No. 54	568,504	1,802	8,110,358	4,501
Fairview School Div. No. 50	220,680	1,360	5,288,026	3,888
Fort Vermilion School Div. No. 52	246,314	2,540	10,858,844	4,275
High Prairie School Div. No. 48	196,023	3,078	*14,525,143*	4,719
Northland School Div. No. 61	449,339	2,811	20,417,366	7,263
Peace River School Div. No. 10	232,877	2,657	10,720,093	4,035
Spirit River School Div. No. 47	357,359	1,077	5,470,041	5,079
County of Grande Prairie No. 1	175,630	3,520	13,489,650	3,832
Grovedale SD No. 4910	601,055	220	955,435	4,343
St Isidore SD No. 5054	168,341	242	1,030,327	4,258
Falher Consolidated SD No. 69	151,016	231	*1,099,980*	4,762
Zone Total/Weighted Average	282,886	19,538	91,965,263	4,707
Mean Average	306,103			4,632
Zone 2				
Lac La Biche School Div. 51	146,887	2,203	9,475,532	4,301
Westlock School Div. No. 37	153,190	2,106	7,798,363	3,703
County of Athabasca No. 12	165,497	2,124	7,903,062	3,721
County of Barrhead No. 11	147,344	2,394	8,904,085	3,719
County of Lac St. Anne No. 28	174,831	2,635	9,632,496	3,656
County of St. Paul No. 19	167,329	1,765	8,815,338	4,995
County of Smoky Lake No. 13	210,103	715	3,339,244	4,670
County of Thorhild No. 7	183,057	633	2,528,432	3,994
Lakeland SD No. 5460	178,123	3,971	13,877,751	3,495
St. Paul SD No. 2228	173,412	773	3,848,400	4,979
Swan Hills SD No. 5109	857,485	442	1,982,383	4,485
Whitecourt SD No. 2736	248,275	1,393	4,928,394	3,538
Zone Total/Weighted Average	194,867	21,154	83,033,480	3,925
Mean Average	233,794			4,105
Zone 3				
Sturgeon School Div. No. 24	163,895	4,824	19,128,446	3,965
Twin Rivers School Div. No. 65	341,806	2,455	9,517,533	3,877
Wainwright School Div. No. 32	233,315	1,483	6,106,000	4,117
Yellowhead School Div. No. 12	304,008	4,773	19,202,328	4,023
County of Beaver No. 9	181,532	1,680	6,421,947	3,823
County of Lamont No. 30	177,294	1,523	6,307,285	4,141
County of Leduc No. 25	193,873	4,282	16,421,045	3,835
County of Minburn No. 27	208,964	1,224	5,031,660	4,111
County of Parkland No. 31	175,759	8,843	34,224,129	3,870
County of Strathcona No. 20	219,828	11,830	49,971,814	4,224
County of Two Hills No. 21	241,871	625	2,870,237	4,592
County of Vermilion River No. 24	169,941	2,318	9,520,510	4,107
County of Wetaskiwin No. 10	178,430	2,435	9,783,192	4,018
Devon SD No. 4972	140,619	984	3,929,349	3,993
Grande Cache SD No. 5258	178,975	942	3,415,782	3,626
Jasper SD No. 3063	404,908	529	2,314,246	4,375
Leduc SD No. 297	148,727	2,545	9,785,800	3,845
Legal SD No. 1738	137,614	315	1,531,149	4,861
Wetaskiwin SD No. 264	162,985	2,417	8,679,832	3,591
Thibault RC Public SD No. 35	124,111	1,727	6,079,615	3,520
Zone Total/Weighted Average	205,419	57,754	230,241,899	3,987
Mean Average	204,423			4,026

APPENDIX C-6 1993 continued: *PUBLIC RURAL JURISDICTIONS*

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrol. Students	Grade 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student
Zone 4				
Neutral Hills School Div. No. 16	495,859	512	2,436,344	4,758
Provost School Div. No. 33	372,139	751	3,650,032	4,860
Rocky Mtn. House S Div. No. 15	287,107	2,968	11,350,532	3,824
County of Camrose No. 22	174,030	1,883	7,929,190	4,211
County of Flagstaff No. 29	206,004	1,901	7,128,113	3,750
County of Lacombe No. 14	230,768	4,105	15,277,052	3,722
County of Paintearth No. 18	465,754	807	3,600,263	4,461
County of Ponoka No. 3	195,048	3,099	10,734,682	3,464
County of Red Deer No. 23	178,965	5,301	18,590,063	3,507
County of Stettler No. 6	268,116	918	4,292,680	4,676
Camrose SD No. 1315	168,076	2,040	8,079,845	3,961
Stettler SD No. 1475	159,043	1,219	4,665,300	3,827
Zone Total/Weighted Average	228,391	25,504	97,734,096	3,832
Mean Average	266,742			4,085
Zone 5				
Acadia School Division No. 8	619,006	590	2,983,404	5,057
Berry Creek School Div. No. 1	3,176,795	126	982,084	7,794
Drumheller Valley S Div. No. 62	161,071	1,053	4,508,350	4,281
Foothills School Div. No. 38	168,840	5,862	22,350,405	3,813
Mount Rundle School Div. No. 64	259,708	1,370	4,588,943	3,350
Rangeland School Div. No. 9	359,892	847	3,520,747	4,157
Rocky View School Div. No. 41	173,244	9,851	37,166,682	3,773
Starland School Div. No. 30	304,622	514	2,565,793	4,992
Three Hills School Div. No. 60	205,947	1,507	6,531,376	4,334
County of Mountain View No. 17	181,743	4,605	17,119,053	3,717
County of Wheatland No. 16	216,056	2,834	11,575,632	4,085
Banff SD No. 102	1,278,790	488	2,326,930	4,768
Exshaw SD No. 1699	1,631,651	153	1,030,208	6,733
Zone Total/Weighted Average	239,096	29,800	117,249,607	3,935
Mean Average	672,105			4,681
Zone 6				
Cardston School Div. No. 2	147,352	3,096	11,248,253	3,633
Crowsnest Pass School Div. No. 63	160,882	1,190	4,299,609	3,613
Cypress School Div. No. 4	1,070,762	945	5,156,234	5,456
Pincher Creek School Div. No. 29	207,089	1,125	4,156,224	3,694
Taber School Div. No. 6	178,663	2,421	8,997,902	3,717
Willow Creek School Div. No. 28	166,615	2,686	10,864,455	4,045
County of Forty Mile No. 8	237,769	952	3,884,342	4,080
County of Lethbridge No. 26	147,622	2,734	10,152,142	3,713
County of Newell No. 4	345,012	1,382	6,005,582	4,346
County of Vulcan No. 2	229,269	1,116	4,869,576	4,363
County of Wamer No. 5	133,591	1,884	7,002,917	3,717
Brooks SD No. 2092	157,546	2,236	8,556,814	3,827
Redcliff SD No. 2283	148,823	626	2,668,388	4,263
Stirling SD No. 647	123,691	301	1,034,497	3,437
Barons Consolidated SD No. 8	179,278	69	360,997	5,232
Zone Total/Weighted Average	233,735	22,763	89,257,932	3,921
Mean Average	242,264			4,076
Public Rural Total/Weighted Aver.	225,139	176,513	709,482,277	4,019
Mean Average	311,245			4,238

APPENDIX C-7
1993 ASSESSMENTS AND INSTRUCTION EXPENDITURES
A COMPARISON OF PUBLIC RURAL AND SEPARATE RURAL JURISDICTIONS
SEPARATE RURAL JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrol. Students	Grade 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student
Zone 1				
Fairview RCSSD No. 35	171,958	284	1,085,820	3,823
High Prairie RCSSD No. 56	153,620	553	2,119,466	3,833
McLennan RCSSD No. 30	156,969	119	362,714	3,048
North Peace RCSSD No. 43	222,932	1,051	4,054,253	3,858
Slave Lake RCSSD No. 490	167,807	430	1,743,303	4,054
Spirit River RCSSD No. 36	223,351	88	312,840	3,555
Valleyview RCSSD No. 84	186,007	117	429,471	3,671
Zone Total/Weighted Average	186,661	2,642	10,107,867	3,826
Mean Average	183,235			3,692
Zone 2				
Lakeland RCSSD No. 150	177,993	1,683	7,004,391	4,162
Westlock RCSSD No. 110	200,730	342	1,475,090	4,313
Whitecourt RCSSD No. 94	229,112	586	1,999,899	3,413
Glen Avon Prot. SSD No. 5	179,865	440	1,978,872	4,497
Zone Total/Weighted Average	192,568	3,051	12,458,252	4,083
Mean Average	196,925			4,096
Zone 3				
Drayton Valley RCSSD No. 111	229,990	416	1,647,464	3,960
Edson RCSSD No. 153	183,242	340	1,210,891	3,561
Fort Saskatchewan RCSSD No. 104	252,269	761	3,464,661	4,553
Hinton RCSSD No. 155	209,965	494	1,660,999	3,362
Leduc RCSSD No. 132	153,124	726	2,505,413	3,451
Sherwood Park RCSSD No. 105	179,215	2,985	11,811,481	3,957
Spruce Grove RCSSD No. 128	158,574	921	2,587,416	2,809
Stony Plain RCSSD No. 151	173,363	545	1,389,510	2,550
Vegreville RCSSD No. 16	149,142	563	1,919,825	3,410
Vermilion RCSSD No. 97	145,627	319	3,196,556	10,021 *
Wainwright RCSSD No. 31	143,502	507	1,821,907	3,594
Wetaskiwin RCSSD No. 15	158,540	421	1,692,526	4,020
Zone Total/Weighted Average	180,576	8,679	31,712,093	3,654
Mean Average	178,046			3,566

APPENDIX C-7 1993 continued

SEPARATE RURAL JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrol. Students	Grade 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student
Zone 4				
Camrose RCSSD No. 60	153,652	437	1,747,175	3,998
Killam RCSSD No. 49	152,925	21	240,449	11,450 *
Ponoka RCSSD No. 95	198,739	268	834,791	3,115
Provost RCSSD No. 65	218,049	216	1,682,372	7,789 *
Rocky Mtn. House RCSSD No. 131	191,816	379	1,304,378	3,442
Theresetta RCSSD No. 23	168,985	88	237,809	2,702
Zone Total/Weighted Average	175,217	1,172	4,124,153	3,519
Mean Average	180,694			3,314
Zone 5				
Airdrie RCSSD No. 365	172,689	480	1,505,814	3,137
Assumption RCSSD No. 50	214,583	37	459,150	12,409 *
Cochrane RCSSD No. 438	189,668	236	811,714	3,439
Drumheller RCSSD No. 25	155,078	264	1,054,137	3,993
Foothills RCSSD No. 346	146,245	662	3,235,734	4,888 *
Zone Total/Weighted Average	162,402	980	3,371,665	3,440
Mean Average	175,653			3,523
Zone 6				
Bow Island RCSSD No. 82	147,186	143	466,528	3,262
Coaldale RCSSD No. 73	199,770	209	749,386	3,586
Old Mossleigh RCSSD No. 400	139,159	40	324,473	8,112 *
Picture Butte RCSSD No. 79	179,760	144	637,248	4,425
Pincher Creek RCSSD No. 18	229,918	394	1,394,908	3,540
Taber RCSSD No. 54	169,322	491	1,536,530	3,129
Zone Total/Weighted Average	189,904	1,381	4,784,600	3,465
Mean Average	177,519			3,589
Separate Rural Total/Weighted Aver.	181,724	17,905	66,558,630	3,717
Mean Average	180,861			3,624
Provincial Total/Weighted Average	202,887	472,025	1,866,379,521	3,954

APPENDIX C-8

1993 ASSESSMENTS AND INSTRUCTION EXPENDITURES
A COMPARISON OF PUBLIC AND SEPARATE JURISDICTIONS
PUBLIC AND SEPARATE SYNOPSIS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrol. Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student
Public Urban Total/Weighted Average	198,018	199,902	786,166,924	3,933
Public Rural Boards				
Zone 1	282,886	19,538	91,965,263	4,707
Zone 2	194,867	21,154	83,033,480	3,925
Zone 3	205,419	57,754	230,241,899	3,987
Zone 4	228,391	25,504	97,734,096	3,832
Zone 5	239,096	29,800	117,249,607	3,935
Zone 6	233,735	22,763	89,257,932	3,921
Public Rural Total/Weighted Average	225,139	176,513	709,482,277	4,019
Public Total/Weighted Average	**210,657**	**376,415**	**1,495,649,201**	**3,973**
percentage of total		79.2	80.2	
percentage of variance from separate	11.7			6.8
Separate Urban Total/Weighted Averag	190,115	81,185	302,148,519	3,722
Separate Rural Boards				
Zone 1	186,661	2,642	10,107,867	3,826
Zone 2	192,568	3,051	12,458,252	4,083
Zone 3	180,576	8,679	31,712,093	3,654
Zone 4	175,217	1,172	4,124,153	3,519
Zone 5	163,378	980	3,371,665	3,440
Zone 6	189,904	1,381	4,784,600	3,465
Separate Rural Total/Weighted Average	181,522	17,905	66,558,630	3,717
Separate Total/Weighted Average	**188,634**	**99,090**	**368,707,149**	**3,721**
percentage of total		20.8	19.8	
percentage of variance from public	-10.5			-6.4

APPENDIX C-9

1993 ASSESSMENTS AND INSTRUCTION EXPENDITURES
A COMPARISON OF PUBLIC AND SEPARATE JURISDICTIONS
PUBLIC JURISDICTIONS AND THEIR RELATED SEPARATE JURISDICTIONS

School Divisions	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrolled Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student	Percentage Var. Pub. From Sep.
Acadia School Division No. 8	**619,006**	**590**	**2,983,404**	**5,057**	
Assumption RCSSD No. 50	214,583	37	459,150	12,409	-59.2 *
Drumheller Valley S Div. No. 62	**161,071**	**1,053**	**4,508,350**	**4,281**	
Drumheller RCSSD No. 25	155,078	264	1,054,137	3,993	7.2
East Smoky School Div. No. 54	**568,504**	**1,802**	**8,110,358**	**4,501**	
Valleyview RCSSD No. 84	186,007	117	429,471	3,671	22.6
Fairview School Div. No. 50	**220,680**	**1,360**	**5,288,026**	**3,888**	
Fairview RCSSD No. 35	171,958	284	1,085,820	3,823	1.7
Foothills School Div. No. 38	**168,840**	**5,862**	**22,350,405**	**3,813**	
Foothills RCSSD No. 346	146,245	662	3,235,734	4,888	-22.0 *
High Prairie School Div. No. 48	**196,023**	**3,078**	**14,525,143**	**4,719**	
High Prairie RCSSD No. 56	153,620	553	2,119,466	3,833	23.1
McLennan RCSSD No. 30	156,969	119	362,714	3,048	54.8
Slave Lake RCSSD No. 490	167,807	430	1,743,303	4,054	16.4
separate aggregate	*161,622*	*1,102*	*4,225,483*	*3,834*	*23.1*
Lakeland SD No. 5460	**178,123**	**3,971**	**13,877,751**	**3,495**	
Lakeland RCSSD No. 150	177,993	1,683	7,004,391	4,162	-16.0 *
Peace River School Div. No. 10	**232,877**	**2,657**	**10,720,093**	**4,035**	
North Peace RCSSD No. 43	222,932	1,051	4,054,253	3,858	4.6
Pincher Creek School Div. No. 29	**207,089**	**1,125**	**4,156,224**	**3,694**	
Pincher Creek RCSSD No. 18	229,918	394	1,394,908	3,540	4.4
Provost School Div. No. 33	**372,139**	**751**	**3,650,032**	**4,860**	
Provost RCSSD No. 65	218,049	216	1,682,372	7,789	-37.6 *
Rocky Mtn. House S Div. No. 15	**287,107**	**2,968**	**11,350,532**	**3,824**	
Rocky Mtn. House RCSSD No. 131	191,816	379	1,304,378	3,442	11.1
Rocky View School Div. No. 41	**173,244**	**9,851**	**37,166,682**	**3,773**	
Airdrie RCSSD No. 365	172,689	480	1,505,814	3,137	20.3
Cochrane RCSSD No. 438	189,668	236	811,714	3,439	9.7
separate aggregate	*178,605*	*716*	*2,317,528*	*3,237*	*16.6*
Spirit River School Div. No. 47	**357,359**	**1,077**	**5,470,041**	**5,079**	
Spirit River RCSSD No. 36	223,351	88	312,840	3,555	42.9
Taber School Div. No. 6	**178,663**	**2,421**	**8,997,902**	**3,717**	
Taber RCSSD No. 54	169,322	491	1,536,530	3,129	18.8

APPENDIX C-9 1993 continued

PUBLIC JURISDICTIONS AND THEIR RELATED SEPARATE JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrolled Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student	Percentage Var. Pub. From Sep.
Twin Rivers School Div. No. 65	**341,806**	**2,455**	**9,517,533**	**3,877**	
Drayton Valley RCSSD No. 111	229,990	416	1,647,464	3,960	-2.1
Wainwright School Div. No. 32	**233,315**	**1,483**	**6,106,000**	**4,117**	
Wainwright RCSSD No. 31	143,502	507	1,821,907	3,594	14.6
Westlock School Div. No. 37	**153,190**	**2,106**	**7,798,363**	**3,703**	
Westlock RCSSD No. 110	200,730	342	1,475,090	4,313	-14.1 *
Yellowhead School Division No. 12	**304,008**	**4,773**	**19,202,328**	**4,023**	
Edson RCSSD No. 153	183,242	340	1,210,891	3,561	13.0
Hinton RCSSD No. 155	209,965	494	1,660,999	3,362	19.7
separate aggregate	*201,002*	*834*	*2,871,890*	*3,444*	*16.8*
aggregate for divs. with sep. dists.	***257,972***	***38,209***	***143,400,042***	***3,753***	
aggregate for sep. dists. in divisions	*190,601*	*6,985*	*23,884,235*	*3,419*	*9.8*
percentage public of total		84.5	85.7		
percentage var. public from sep.	*35.3*			*9.8*	
Counties					
County of Flagstaff No. 29	**206,004**	**1,901**	**7,128,113**	**3,750**	
Killam RCSSD No. 49	152,925	21	240,449	11,450	-67.2 *
County of Forty Mile No. 8	**237,769**	**952**	**3,884,342**	**4,080**	
Bow Island RCSSD No. 82	147,186	143	466,528	3,262	25.1
County of Lethbridge No. 26	**147,622**	**2,734**	**10,152,142**	**3,713**	
Coaldale RCSSD No. 73	199,770	209	749,386	3,586	3.5
Picture Butte RCSSD No. 79	179,760	144	637,248	4,425	-16.1
separate aggregate	*190,369*	*353*	*1,386,634*	*3,928*	*-5.5*
County of Minburn No. 27	**208,964**	**1,224**	**5,031,660**	**4,111**	
Vegreville RCSSD No. 16	149,142	563	1,919,825	3,410	20.6
County of Paintearth No. 18	**465,754**	**807**	**3,600,263**	**4,461**	
Theresetta RCSSD No. 23	168,985	88	237,809	2,702	65.1
County of Parkland No. 31	**175,759**	**8,843**	**34,224,129**	**3,870**	
Spruce Grove RCSSD No. 128	158,574	921	2,587,416	2,809	37.8
Stony Plain RCSSD No. 151	173,363	545	1,389,510	2,550	51.8
separate aggregate	*165,135*	*1,466*	*3,976,926*	*2,713*	*42.7*
County of Ponoka No. 3	**195,048**	**3,099**	**10,734,682**	**3,464**	
Ponoka RCSSD No. 95	198,739	268	834,791	3,115	11.2
County of Strathcona No. 20	**219,828**	**11,830**	**49,971,814**	**4,224**	
Fort Saskatchewan RCSSD No. 104	252,269	761	3,464,661	4,553	-7.2
Sherwood Park RCSSD No. 105	179,215	2,985	11,811,481	3,957	6.7
separate aggregate	*193,038*	*3,746*	*15,276,142*	*4,078*	*3.6*

APPENDIX C-9 1993 continued

PUBLIC JURISDICTIONS AND THEIR RELATED SEPARATE JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrolled Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student	Percentage Var. Pub. From Sep.
County of Vermilion River No. 24	**169,941**	**2,318**	**9,520,510**	**4,107**	
Vermilion RCSSD No. 97	145,627	319	3,196,556	10,021	-59.0 *
County of Vulcan No. 2	**229,269**	**1,116**	**4,869,576**	**4,363**	
Old Mossleigh RCSSD No. 400	139,159	40	324,473	8,112	-46.2 *
Aggregate for Ctys. with Sep. Dists.	***203,277***	***29,489***	***117,599,032***	***3,988***	
aggregate for sep. dists. in counties	*183,351*	*6,627*	*24,098,655*	*3,636*	9.7
percentage public of total		81.7	83.0		
percentage var. public from sep.	*10.9*			*9.7*	
School Districts					
Calgary SD No. 19	**204,336**	**91,831**	**370,326,138**	**4,033**	
Calgary RCSSD No. 1	191,300	32,111	119,643,027	3,726	8.2
Camrose SD No. 1315	**168,076**	**2,040**	**8,079,845**	**3,961**	
Camrose RCSSD No. 60	153,652	437	1,747,175	3,998	-0.9
Edmonton SD No. 7	**196,961**	**72,512**	**279,433,547**	**3,854**	
Edmonton RCSSD No. 7	193,508	29,668	108,335,186	3,652	5.5
Fort McMurray SD No. 2833	**274,152**	**4,286**	**16,955,668**	**3,956**	
Fort McMurray RCSSD No. 32	279,159	3,510	14,591,757	4,157	-4.8
Grande Prairie SD No. 2357	**163,116**	**4,449**	**17,780,325**	**3,996**	
Grande Prairie RCSSD No. 28	158,073	2,014	7,575,444	3,761	6.2
Leduc SD No. 297	**148,727**	**2,545**	**9,785,800**	**3,845**	
Leduc RCSSD No. 132	153,124	726	2,505,413	3,451	11.4
Lethbridge SD No. 51	**180,519**	**7,704**	**30,712,723**	**3,987**	
Lethbridge RCSSD No. 9	172,957	2,822	10,627,031	3,766	5.9
Medicine Hat SD No. 76	**170,669**	**6,342**	**23,818,828**	**3,756**	
Medicine Hat RCSSD No. 21	169,678	2,147	8,220,374	3,829	-1.9
Red Deer SD No. 104	**167,504**	**8,315**	**30,779,184**	**3,702**	
Red Deer RCSSD No. 17	154,533	2,968	10,023,688	3,377	9.6
St. Albert SD No. 3	**152,802**	**4,463**	**16,360,511**	**3,666**	
St. Albert Prot. SSD No. 6	151,389	5,945	23,132,012	3,891	-5.8
St. Paul SD No. 2228	**173,412**	**773**	**3,848,400**	**4,979**	
Glen Avon Prot. SSD No. 5	179,865	440	1,978,872	4,497	10.7
Wetaskiwin SD No. 264	**162,985**	**2,417**	**8,679,832**	**3,591**	
Wetaskiwin RCSSD No. 15	158,540	421	1,692,526	4,020	-10.7
Whitecourt SD No. 2736	**248,275**	**1,393**	**4,928,394**	**3,538**	
Whitecourt RCSSD No. 94	229,112	586	1,999,899	3,413	3.7

APPENDIX C-9 1993 continued

PUBLIC JURISDICTIONS AND THEIR RELATED SEPARATE JURISDICTIONS

	Modified Adj. Eq. Assess. Per Res. Student	Sept. 30 1-12 Enrolled Students	Grades 1-12 Instruction Expenditures	Inst. Exp. Per Enrolled Student	Percentage Var. Pub. From Sep.
agg. for pub. dists. with sep. dists.	***196,783***	***209,070***	***821,489,195***	***3,929***	
agg. for sep. dists. in pub. dists.	*189,136*	*83,795*	*312,072,404*	*3,724*	*5.5*
percentage public of total		71.4	72.5		
percentage var. public from sep.	*4.0*			*5.5*	
Summary					
aggregate for public with separate	***205,706***	***276,768***	***1,082,488,269***	***3,911***	
aggregate for separate districts	*188,863*	*97,407*	*360,055,294*	*3,696*	*5.8*
percentage public of total		74.0	75.0		
percentage var. public from sep.	*8.9*			*5.8*	

* anomolies: public and separate jurisdictions excluded from all aggregates

Appendix D-1

1993 SAMPLE ASSESSMENTS AND REQUISITIONS

	Sept. 30 Resident Students	Adj. Equalized Asses. Per Res. Student	Net Mill Rate	Supplementary Req. Per Res. Student	Sept. 30 Enrolled Students	93-94 Budgeted Expend. Per Enrolled Student
Banff School District No. 102	485	1,278,790	3.30	4,214	515	7,702
Berry Creek School Div. No. 1	186	3,176,795	4.22	13,405	159	21,311
Cardston School Div. No. 2	2,540	81,451	12.08	984	3,206	5,509
County of Barrhead No. 11	2,464	97,206	14.79	1,438	2,543	6,072
County of Paintearth No. 18	856	465,754	8.09	3,768	813	7,988
Cypress School Div. No. 4	1,250	1,070,762	4.77	5,109	991	12,545
Devon School District No. 4972	954	109,707	17.46	1,916	1,053	5,444
East Smoky School Div. No. 54	1,791	568,504	5.93	3,371	1,894	6,993
North Peace RCSSD No. 43	1,019	222,932	14.35	3,199	1,098	6,944
Stirling School District No. 647	300	48,822	13.17	643	310	5,778
Valleyview RCSSD No. 84	150	79,605	8.45	673	139	5,687
PROVINCIAL TOTAL/AVERAGE	486,638	190,799	11.75	2,242	498,142	5,872

Appendix D-2

VOLUNTARY PUBLIC REGIONALIZATIONS

JURISDICTION NAME	M.O.	SIGNED	EFFECTIVE
(Aspen Regional Division No. 31) changed to:	137/94	October 5, 1994	January 1, 1995
Battle River Regional Division No. 31 • County of Beaver No. 9 • County of Flagstaff No. 29 • County of Camrose No. 22 • Camrose School District No. 1315	162/94	December 20, 1994	January 1, 1995
Black Gold Regional Division No. 18 • County of Leduc No. 25 • Leduc School District No. 297 • Devon School District No. 4972	118/94	August 25, 1994	January 1, 1995
Canadian Rockies Regional Division No. 12 • Mount Rundle School Division No. 64 • Banff School District No. 102 • Exshaw School District No. 1699	078/94	July 26, 1994	September 1, 1994
(Three Hills/Wheatland Regional Division No. 15) changed to:	126/94	September 7, 1994	January 1, 1995
Golden Hills Regional Division No. 15 • County of Wheatland No. 16 • Three Hills School Division No. 60 • Drumheller Valley School Division No. 62	152/94	November 10, 1994	January 1, 1995
Grasslands Regional Division No. 6 • Brooks School District No. 2092 • County of Newell No. 4	066/94	July 21, 1994	September 1, 1994
Greater St. Albert Catholic Regional Div. No. 29 • St. Albert School District No. 3 • Thibault RCPSD No. 35 • Legal School District No. 1738	116/94	August 31, 1994	January 1, 1995
Palliser Regional Division No. 26 • County of Lethbridge No. 26 • Barons Consolidated District No. 8 • County of Vulcan No. 2 (90%)	115/94	August 30, 1994	January 1, 1995
Peace Wapiti Regional Division No. 33 • County of Grande Prairie No. 1 • Grovedale School District No. 4910 • Spirit River School Division No. 47	138/94	July 21, 1994	January 1, 1995

* INJUNCTION

Pembina Hills Regional Division No. 7 - County of Barrhead No. 11 - Westlock School Division No. 37 - Swan Hills School District No. 5109	067/94	October 5, 1994	January 1, 1995
Prairie Land Regional Division No. 25 - Neutral Hills School Division No. 16 - Rangeland School Division No. 9 - Starland School Division No. 30 - Livingston PSSD No. 8 - Berry Creek School Division No. 1	107/94	August 23, 1994	January 1, 1995
Prairie Rose Regional Division No. 8 - County of Forty Mile No 8 - Cypress School Division No. 4 - Acadia School Division No. 8 - Redcliff School District No. 2283	068/94	July 21, 1994	January 1, 1995
Westwind Regional Division No. 9 - Cardston School Division No. 2 - Stirling School District No. 647 - County of Warner No. 5 (63%)	093/94	August 10, 1994	September 1, 1994
Wetaskiwin Regional Division No. 11 - Wetaskiwin School District No. 264 - County of Wetaskiwin No. 10	085/94	August 9, 1994	January 1, 1995
(Ponoka/Lacombe Regional Division No. 32) changed to:	131/94	September 21, 1994	January 1, 1995
Wolf Creek Regional Division No. 32 - County of Lacombe No. 14 - County of Ponoka No. 3	163/94	December 20, 1994	January 1, 1995

* INJUNCTION

VOLUNTARY SEPARATE REGIONALIZATIONS

JURISDICTION NAME	M.O.	SIGNED	EFFECTIVE
Christ the Redeemer CS Regional Div. No. 3 • Assumption RCSSD No. 50 • Drumheller RCSSD No. 25 • Foothills RCSSD No. 346 (incl. Old Mossleigh RCSSD No. 400)	055/94	July 7, 1994	January 1, 1995
East Central Alberta CS Schools Reg. Div. No. 16 • Wainwright RCSSD No. 31 • Vermilion RCSSD No. 97 • Provost RCSSD No. 65 • Theresetta RCSSD No. 23 • Killam RCSSD No. 49	065/94	July 15, 1994	September 1, 1994
***Evergreen CS Regional Division No. 2** • Stony Plain RCSSD No. 151 • Spruce Grove RCSSD No. 128	041/94	June 10, 1994	June 10, 1994
***Good Shepherd RCS Regional Division No. 13** • Rocky Mountain House RCSSD No. 131 • Drayton Valley RCSSD No. 111	057/94	July 15, 1994	January 1, 1995
***Holy Family Catholic Separate Reg. Div. No. 17** • Valleyview RCSSD No. 84 • McLennan RCSSD No. 30 • High Prairie RCSSD No. 56	069/94	July 21, 1994	January 1, 1995
(Holy Spirit CSRD No. 4) changed to: **Holy Spirit RCS Regional Division No. 4** • Lethbridge RCSSD No. 9 • Coaldale RCSSD No. 73 • Pincher Creek RCSSD No. 18 • Taber RCSSD No. 54 • Picture Butte RCSSD No. 79	051/94 146/94	July 7, 1994 October 23, 1994	January 1, 1995 January 1, 1995
***Holy Trinity Catholic Regional Division No. 21** • Whitecourt RCSSD No. 94 • Westlock RCSSD No. 110	099/94	August 17, 1994	January 1, 1995
Medicine Hat CS Regional Division No. 20 • Bow Island RCSSD No. 82 • Medicine Hat RCSSD No. 21	086/94	August 9, 1994	January 1, 1995

* INJUNCTION

***St. Thomas Aquinas RCS Regional Div. No. 22** • Leduc RCSSD No. 132 • Ponoka RCSSD No. 95 • Wetaskiwin RCSSD No. 15	100/94	August 17, 1994	January 1, 1994
***Sundance CS Regional Division No. 10** • Hinton RCSSD No. 155 • Edson RCSSD No. 153	058/94	July 15, 1994	September 1, 1994

* INJUNCTION

AMALGAMATIONS/BOUNDARY ADJUSTMENTS - PUBLIC AND SEPARATE

JURISDICTION NAME	M.O.	SIGNED	EFFECTIVE
Calgary RCS School District No. 1 • Airdrie RCSSD No. 365 • Cochrane RCSSD N0. 439	043/94 045/94	June 10, 1994 June 20, 1994	September 1, 1994 September 1, 1994
Grande Prairie RCS School District No. 28 • Fairview RCSSD No. 35 • Spirit River RCSSD No. 36	042/94	June 10, 1994	September 1, 1994
(Shortgrass School Division No. 67) changed to:	088/94	August 10, 1994	August 31, 1994
Horizon School Division No. 67 • Taber School Division No. 6 • County of Warner No. 5 (37%) • County of Vulcan No. 2 (10%)	159/94	December 19, 1994	December 19, 1994
Livingstone Range School Division No. 68 • Willow Creek School Division No. 28 • Pincher Creek School Division No. 29 • Crowsnest Pass School Division No. 63 • Waterton Park School District No. 4233	140/94	October 12, 1994	January 1, 1995
***North Peace RCS School District No. 43** • Fort Vermilion RCSSD No. 26	095/94	August 9, 1994	September 1, 1994
Northern Lights School Division No. 69 • Lac La Biche School Division No. 51 • Lakeland Public School District No. 5460	141/94	October 12, 1994	January 1, 1995
Parkland School Division No. 70 • County of Parkland No. 31	156/94	December 9, 1994	January 1, 199
Peace River School Division No. 10 • Fairview School Division No. 50 • St. Isidore School District No. 5054	133/94	October 5, 1994	January 1, 1995
***Sherwood Park CS School District No. 105** • Camrose RCSSD No. 60	139/94	October 3, 1997	October 3, 1997
Wild Rose School Division No. 66 • Rocky Mountain School Division No. 15 • Twin Rivers School Division No. 65	052/94	July 7, 1994	September 1, 1994

* INJUNCTION

UNCHANGED BOARDS

JURISDICTION NAME	M.O.	SIGNED	EFFECTIVE
Calgary School District No. 19			
Edmonton RCS School District No. 7			
Edmonton School District No. 7			
Foothills School Division No. 38			
Fort McMurray RCS School District No. 32			
Fort McMurray School District No. 2833			
*Fort Saskatchewan RCS School Dist. No. 104			
Fort Vermilion School District No. 52			
Grande Prairie School District No. 2357			
High Prairie School Division No. 48			
Lakeland RCS School District No. 150			
Lethbridge School District No. 51			
Medicine Hat School District No. 76			
Northland School Division No. 61			
Red Deer RCS School District No. 17			
Red Deer School District No. 104			
Rocky View School Division No. 41			
*Slave Lake RCS School District No. 364			
St. Albert Protestant Separate School Dist. No. 6			
Sturgeon School Division No. 24			

* INJUNCTION

INVOLUNTARY PUBLIC REGIONALIZATIONS

JURISDICTION NAME	O.C	SIGNED	EFFECTIVE
(Greater Aspen View Regional Division No. 19) changed to:	581/94	October 13, 1994	January 1, 1995
Aspen View Regional Division No. 19 • County of Smoky Lake No. 13 • County of Athabasca No. 12 • County of Thorhild No. 7	781/94	December 21, 1994	January 1, 1995
(Greater Buffalo Trail Regional Division No. 28) changed to:	586/94	October 13, 1994	January 1, 1995
Buffalo Trail Regional Division No. 28 • Provost School Division No. 33 • Wainwright School Division No. 32 • County of Vermilion River No. 24 • County of Minburn No. 27 (east)	782/94	December 21, 1994	January 1, 1995
(David Thompson Regional Division No. 5) changed to: **Chinook's Edge Regional Division No. 5** • County of Red Deer No. 23 • County of Mountain View No. 17	577/94	October 13, 1994	January 1, 1995
(Greater Heartland Regional Division No. 24) changed to: **Clearview Regional Division No. 24** • County of Paintearth No. 18 • Stettler School District No. 1475 • County of Stettler No. 6	585/94	October 13, 1994	January 1, 1995
(Greater Elk Island Regional Division No. 14) changed to:	579/94	October 13, 1994	January 1, 1995
Elk Island Public Schools Regional Division No. 14 • County of Lamont No. 30 • County of Strathcona No. 20 • County of Minburn No. 27 (west)	692/94	November 30, 1994	January 1, 1995
Grande Yellowhead Regional Division No. 35 • Grande Cache School District No. 5258 • Yellowhead School Division No. 12	587/94	October 13, 1994	January 1, 1995
• Jasper School District No. 3063			September 1, 1995
Northern Gateway Regional Division No. 10 • East Smoky School Division No. 54 • Whitecourt School District No. 2736 • County of Lac Ste. Anne No. 28	578/94	October 13, 1994	January 1, 1995

* INJUNCTION

(Greater St. Paul Education Regional Division No. 1) changed to: **St. Paul Education Regional Division No. 1** • County of Two Hills No. 21 • St. Paul School District No. 2228 • Glen Avon PSSD No. 5 • County of St. Paul No. 19 • St. Paul Regional High School District No. 1	575/94	October 13, 1994	January 1, 1995

* INJUNCTION

INVOLUNTARY REGIONALIZATIONS SUSPENDED BY INJUNCTION

JURISDICTION NAME	O.C.	SIGNED	EFFECTIVE
***Elk Island Holy Trinity CSRD No. 23** • Fort Saskatchewan RCSSD No. 104 • Sherwood Park CSSD No. 105 • Vegreville CSSD No. 16	584/94	October 13, 1994	December 30, 1994
***Greater Holy Family CSRD No. 17** • North Peace RCSSD No. 443 • Holy Family CSRD No. 17	580/94	October 13, 1994	January 1, 1995
***Greater Holy Trinity CRD No. 21** • Slake Lake RCSSD No. 364 • Holy Trinity CSRD No. 21	582/94	October 13, 1994	January 1, 1995
***Greater St. Thomas Aquinas RCSRD No. 22** • Good Shepherd RCSRD No. 13 • St. Thomas Aquinas RCSRD No. 22	583/94	October 13, 1994	January 1, 1995
***Sundance-Evergreen CSRD No. 2** • Sundance CSRD No. 10 • Evergreen CSRD No. 2	576/94	October 13, 1994	January 1, 1995

* INJUNCTION

NEW VOLUNTARY SEPARATE REGIONALIZATIONS

JURISDICTION NAME	M.O.	SIGNED	EFFECTIVE
Edmonton Catholic Regional Division No. 40 • Edmonton RCSSD No. 7 • Vegreville CSSD No. 16	015/97	May 28, 1997	September 1, 1997
Elk Island Catholic Separate Regional Div. No. 41 • Fort Saskatchewan RCSSD No. 104 • Sherwood Park CSSD No. 105	001/98	January 28, 1998	February 1, 1998
Evergreen Catholic Separate Regional Div. No. 2 • Evergreen CSRD No. 2 • Westlock Ward of Holy Trinity RCRD No. 36	003/98	February 11, 1998	April 1, 1998
Holy Family Catholic Regional Division No. 37 • Holy Family CSRD No. 17 • North Peace RCSSD No. 43	002/97	January 15, 1997	September 1, 1997
Holy Trinity Roman Catholic Regional Div. No. 36 • Holy Trinity CRD No. 21 • Slave Lake RCSSD No. 364	001/97	January 15, 1997	January 15, 1997
Living Waters Catholic Regional Division No. 42 • Sundance CSRD No. 10 • Whitecourt and Slave Lake Wards of Holy Trinity RCRD No. 36	003/98	February 11, 1998	April 1, 1998
Red Deer Catholic Regional Division No. 39 • Red Deer RCSSD No. 17 • Good Shepherd RCSRD No. 13	003/97	January 15, 1997	September 1, 1997
St. Thomas Aquinas RCS Regional Division No. 38 • St. Thomas Aquinas RCSRD No. 22 • Good Shepherd RCSRD No. 13	003/97	January 15, 1997	September 1, 1997

* INJUNCTION

Appendix E

Interview Questions

1. Edmonton Catholic Separate School Board refused to share school facilities with Edmonton Public School Board but worked hard to get city approval to share a school facility with a commercial grocery chain. How would you explain that apparent dichotomy?
2. Why is the separation of Catholic students and non-Catholic students considered important? Would both Catholic and non-Catholic students learn more understanding of others in their community if they were exposed to each other for at least a portion of the school time?
3. Should shared facilities between public and separate boards be given more consideration in sparsely populated rural areas where it is sometimes difficult to maintain even one viable school?
4. What is your opinion of the appropriateness of non-Catholic students attending Catholic separate schools?
5. Why is it important for Alberta's separate boards to opt out of the Alberta School Foundation Fund when the resultant, highly administrative process makes no difference in the funding available to the board? Are there other alternatives?
6. In 1997, Ontario's Bill 160 centralized property taxation power for education in the hands of the province. In 2001, the Supreme Court of Canada found that separate school boards had no inherent right to independent property taxation; fiscal equity with the public system was the critical factor. In view of this finding, should the Province of Alberta simplify the legislated process for funding schools in Alberta and remove the option for separate school boards to opt out of the Alberta School Foundation Fund?
7. Under the new alternative method for expanding separate jurisdiction boundaries, a decision to expand is made by those outside of the local community; the local minority electors have no vote or ability to choose to remain within a single public system. What is your opinion of the appropriateness of the alternative method?

8. Should individual separate electors residing in a separate jurisdiction have the right to choose to remain a resident of the public school jurisdiction? Why?
9. Constitutional minority religious education rights for Protestants and Roman Catholics were granted at a time when those were essentially the only categories recognized. Journalist Lois Sweet in her 1997 book, *God in the Classroom*, said it is time for "re-examining the issue of the constitutional guarantee for public funding to Catholic schools in light of today's new multicultural, multi-religious reality." How would you respond to this position?

Appendix F

STUDENT ENROLMENTS IN ALBERTA AND THE CITY OF CALGARY
A COMPARISON OF PUBLIC AND SEPARATE JURISDICTIONS FOR 1973, 1983, 1993, and 2003

	1973	**1983**	Percentage var. 73 to 83	**1993**	Percentage var. 83 to 93	**2003**	Percentage var. 93 to 03
Alberta							
Public	341,005	341,037	0.0	376,415	10.4	371,147	-1.4
percentage of total	82.1	81.3		79.2		76.1	
Separate	74,381	78,363	5.4	99,090	26.4	116,369	17.4
percentage of total	17.9	18.7		20.8		23.9	
Total Pub. and Sep.	415,386	419,400	1.0	475,505	13.4	487,516	2.5
Calgary							
Public	81,297	78,590	-3.3	91,831	16.8	90,945	-1.0
percentage of total	78.8	77.0		74.1		69.5	
Separate *	21,878	23,446	7.2	32,111	37.0	39,902	24.3
percentage of total	21.2	23.0		25.9		30.5	
Total Pub. and Sep.	103,175	102,036	-1.1	123,942	21.5	130,847	5.6

* excluding Airdrie, Chestermere, and Cochrane for 2003 in order to compare coterminous boundaries